No. 15023

United States
Court of Appeals
for the Ninth Circuit

AMEROCEAN STEAMSHIP COMPANY, INC., a corporation, and BLACKCHESTER LINES, INC., a corporation, Appellants,

vs.

ALBERT W. COPP, Jr., as Executor under the Last Will and Testament of Albert W. Copp, deceased, Appellee.

Transcript of Record

Appeal from the United States District Court for the Western District of Washington, Northern Division

FILED

MAR 21 1956

PAUL P. O'BRIEN, CLERK

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif. —3-5-56

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[Clerk's Note: When deemed likely to be of an important na-
ıre, errors or doubtful matters appearing in the original certified
ecord are printed literally in italic; and, likewise, cancelled mat-
er appearing in the original certified record is printed and can-
elled herein accordingly. When possible, an omission from the
ext is indicated by printing in italic the two words between which
ıe omission seems to occur.]

NAMES AND ADDRESSES OF PROCTORS

SUMMERS, BUCEY & HOWARD,

Central Building,
Seattle 4, Washington,

Proctors for Appellants.

BOGLE, BOGLE & GATES,

Central Building,
Seattle 4, Washington,

Proctors for Appellee.

In the United States District Court for the Western District of Washington, Northern Division

No. 16054—In Admiralty

AVON SMITH, Libelant,

vs.

THE STEAMSHIP AMEROCEAN and All Persons Claiming Any Interest Therein, and BLACKCHESTER STEAMSHIP CO., its masters, charters, agents or representatives, Respondents.

LIBEL

To the Honorable Judges of the District Court of the United States for the Western District of Washington, Northern Division:

The libel of Avon Smith against The Steamship Amerocean, its engines, etc., and against All persons claiming any interest therein, and Blackchester Steamship Company, its masters, charters, agents, or representatives, in a cause of action in tort for damages for personal injuries, civil and maritime, alleges as follows:

I.

That at all times hereinafter mentioned the Blackchester Steamship Company, was and still is a foreign corporation.

II.

That at all times and dates hereinafter mentioned the Blackchester Steamship Company owned, operated, and controlled the steamship Amerocean.

III.

That at the time hereinafter mentioned, the libelant was in the employ of the Northwest Ship Repair Company.

IV.

That at the time hereinafter mentioned, the Blackchester Steamship Company and the steamship Amerocean, its masters, charterers, agents or representatives contracted with the Northwest Ship Repair Company for the purpose of making certain repairs to and doing certain rigging and removing of dunnage on the steamship Amerocean.

V.

That at the time hereinafter mentioned, libelant was lawfully upon the steamship Amerocean and was lawfully engaged in the course of his employment thereon.

VI.

That at the time hereinafter mentioned, the said steamship Amerocean was lying in the navigable waters of the United States, at Northwest Ship Repair Company's dock, in Seattle, Washington.

VII.

That on or about the 16th day of August, 1954, while libelant was lawfully engaged in the course of his employment upon the said steamship Amerocean, libelant without any fault on his own part, and wholly and solely through the carelessness, recklessness and negligence of the Blackchester Steamship Company and the steamship Amerocean, its officers, agents, servants, employees, and the

crew thereof, was caused to fall upon a portion of the deck of said vessel which was slippery with oil, as result of which he sustained severe and painful injuries, in that, among other things, he suffered a fractured left hip. That the respondents were negligent in oiling one half of said ship's deck and leaving it in a slippery and hazardous condition and leaving the other half of the deck in an ordinary unoiled condition. That the respondents were negligent in permitting said condition to remain and the deck to be a source of menace and danger and in failing to give any warning of this oiled and slippery condition or to guard or rope off this area to prevent anyone from coming upon it unaware, as a result of all of which libelant was caused to and did fall on the slippery oil deck when he stepped from the hatch upon which he had been standing while working on the rigging of the booms and upon said oiled surface of the deck, thereby sustaining severe and painful injuries. That libelant had been upon the other side of the deck, which was unoiled, before going onto the hatch.

VIII.

Upon information and belief that said injuries were directly caused by reason of the negligence of the defendants, their agents, servants and employees in that they failed and neglected to supply the plaintiff with a safe place in which to work; failed to supply the plaintiff with a sufficient number of competent co-employees and superior officers; failed to properly instruct the libelant in the course

of his duties; failed to properly superintend and supervise the work going on at the time libelant was injured; failed to promulgate and enforce proper and safe rules for the safe conduct of said work and to warn libelant of the impending danger due to the presence of oil on one side of the deck and the absence of oil from the other side of the deck upon which libelant had stood prior to going up upon the hatch.

IX.

That by reason of said injury libelant sustained a fractured left hip, has suffered and will continue to suffer great pain and suffering, has been hospitalized, has lost large sums of money which he would have otherwise earned, has been forced to provide for his own maintenance and hospitalization, and has suffered a permanent disability which will prevent him from carrying out his duties and occupation as he did prior to said action, all to his damage in the sum of $40,000.00.

X.

That the said steamship Amerocean is now within this district and within the jurisdiction of this Court.

XI.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

For a second, separate and independent cause of action.

I.

Libelant repeats and realleges each and every allegation contained in paragraphs I, II, III, IV, V and VI, with equal force and vigor as if the same were herein set forth in full.

II.

That on or about the 16th day of August, 1954, while libelant was lawfully engaged in the course of his employment upon the said steamship Amerocean, libelant without any fault on his own part, and wholly and solely as a direct and proximate result of the unseaworthiness of said steamship Amerocean, was caused to slip and fall on an oily and slippery portion of the deck of said vessel, thereby sustaining severe and painful injuries in that, among other things, he suffered a fractured left hip. That said vessel was unseaworthy in that one half of the deck was oiled and slippery and in a hazardous condition while the other half was in an unoiled condition and that no guards or ropes or warnings were present to prevent one from coming upon the oiled surface without knowledge thereof.

III.

That libelant stepped down upon said oiled and slippery surface of the deck without knowledge or warning of its hazardous and slippery condition, since he had previously gone up upon the hatch from the unoiled side of the deck.

IV.

That as a direct and proximate result of the unseaworthiness of the steamship Amerocean libelant sustained a fractured left hip, has suffered and will continue to suffer great pain and suffering, has been hospitalized, has lost large sums of money which he would have otherwise earned, has been forced to provide for his own maintenance and hospitalization, and has suffered a permanent disability which will prevent him from carrying out his duties and occupation as he did prior to said action, all to his damage in the sum of $40,000.00.

V.

That the said steamship Amerocean is now within this district and within the jurisdiction of this Court.

VI.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore, the libelant prays:

1. That process in due form of law and according to the course and practice of this Court in case of admiralty and maritime jurisdiction, may issue against the said steamship Amerocean, its engines, etc., and that all persons claiming any interest therein may be cited to appear and answer the matters aforesaid, and that said steamship Amerocean, its engines, etc., may be condemned and sold

to satisfy the claim of the libelant aforesaid, for $40,000.00 on each count with costs.

2. A monition issue to the respondent, Blackchester Steamship Company, which is and may be served within the jurisdiction of this Court, and that it may be required to answer on oath all and singular the matters aforesaid, and

3. That this Honorable Court may be pleased to decree the payment of the amount due as aforesaid, $40,000.00, on each account against the said respondent as its liability may appear, together with the costs of this action, and

4. That the libelant herein may have such other and further relief in the premises as in law and justice he may be entitled to receive.

/s/ KANE & SPELLMAN,
Proctors for Libelant

Duly Verified.

[Endorsed]: Filed Sept. 10, 1954.

[Title of District Court and Cause.]

CLAIM OF OWNERSHIP

The Amerocean Steamship Company, Inc., a corporation, and Blackchester Lines, Inc., a corporation, as owners of the respondent steamship "Amerocean", her engines, etc., intervening for their interest as such owners, appear before the above entitled court and claim said respondent steamship, pray that they will be permitted to defend accordingly, and that said court will order restitution thereof and otherwise administer right and justice in the premises.

The Amerocean Steamship Company,
Inc. and Blackchester Lines, Inc.

By SUMMERS, BUCEY & HOWARD
/s/ THEODORE A. LEGROS,
Proctors for Claimants

United States of America,
State of Washington, County of King—ss.

Theodore A. LeGros, being first duly sworn, on oath states that he is a member of the firm of Summers, Bucey & Howard, and as such is one of the proctors of record for the claimants herein, that he is authorized to make the foregoing claim of ownership on behalf of The Amerocean Steamship Company, Inc. and Blackchester Lines, Inc., owners of the S.S. "Amerocean"; that said claimants now are the sole true and bona fide owners of said

respondent steamship "Amerocean", her engines, etc., and that as such owners they are entitled to the sole and complete possession thereof.

/s/ THEODORE A. LEGROS

Subscribed and sworn to before me this 10th day of September, 1954.

[Seal] /s/ G. H. BUCEY,
Notary Public in and for the State of Washington, residing at Seattle.

Acknowledgment of Service attached.

[Endorsed]: Filed Sept. 10, 1954.

[Title of District Court and Cause.]

OBLIGATION IN LIEU OF BOND

Know all men by these presents:

That in consideration of the respondent Steamship "Amerocean", her engines, etc. being forthwith released from the official custody of the United States Marshal without delay and without bond, the undersigned, Amerocean Steamship Company, Inc., a corporation, and Blackchester Lines, Inc., a corporation, as owners, and The Steamship Mutual Underwriting Association, Limited, as protection and indemnity underwriters thereon, do hereby obligate themselves irrevocably (upon written demand by or for libelant served upon Summers, Bucey & Howard of Seattle, Washington, as proc-

tors of record for the respondent steamship "Amerocean" and claimants thereof), either to pay in full judgment not exceeding $40,000.00 plus interest and costs, if any, in the above entitled cause in favor of libelant as may be provided by final decree of the above entitled court or any appellate court; or to furnish and file herein stipulation for value and costs in the sum of $40,000.00 in the usual form duly executed in behalf of the claimants as principals and in behalf of an approved corporate surety as surety.

Dated this 10th day of September, 1954 at Seattle.

The Amerocean Steamship Company, Inc., a corporation, and Blackchester Lines, Inc., a corporation, owners and claimants of the S.S. "Amerocean"

By SUMMERS, BUCEY & HOWARD
/s/ THEODORE A. LEGROS,
(Specially authorized)

The Steamship Mutual Underwriting Association, Limited

By SUMMERS, BUCEY & HOWARD
/s/ THEODORE A. LEGROS,
(Specially authorized by John C. Monroe, its United States representative at New York)

To the United States Marshal:

The foregoing obligation in lieu of bond having been approved by us, you are hereby authorized

and directed to release the respondent steamship from your official custody without further security.

Dated this 10th day of September, 1954, at Seattle, Washington.

KANE & SPELLMAN

/s/ KANE & SPELLMAN,

/s/ By JOHN D. SPELLMAN,

Proctors for Libelant

To the clerk of the above entitled court:

Upon the filing of the foregoing obligation in lieu of bond, libelant consents that claimants may appear in the above entitled cause without filing the usual stipulation for costs.

Dated this 10th day of September, 1954, at Seattle, Washington.

KANE & SPELLMAN,

/s/ KANE & SPELLMAN,

/s/ By JOHN D. SPELLMAN,

Proctors for Libelant

Seattle, Washington, September 10, 1954

I hereby certify and return that in accordance with the Obligation in Lieu of Bond, I did release the Steamship Amerocean, its engines, etc., at Se-

attle, Washington, on the 10th day of September, 1954.

W. B. PARSONS,
United States Marshal

/s/ By JOHN E. O'CONNOR,
Deputy

[Endorsed]: Filed Sept. 10, 1954.

[Title of District Court and Cause.]

CLAIMANTS' EXCEPTIONS TO LIBEL

The above named claimants except to the alleged First Cause of Action of the libel herein on the ground that it is incompetent and improper and fails to state a cause of action in rem against the respondent vessel; since the only jurisdiction obtained in this action is in rem against said vessel, and said alleged cause of action purports to be based only upon the alleged negligence of said vessel, her owner and operator, and its officers, agents and servants, and the crew of said vessel, which is not a proper basis for such a cause of action in rem; hence said alleged cause of action should be dismissed or stricken.

Without waiving the foregoing exceptions, said claimants further except to said libel on the ground that it purports to allege two "separate and independent" causes of action seeking the same alleged damages for the same alleged injuries.

SUMMERS, BUCEY & HOWARD

/s/ G. H. BUCEY,

/s/ THEODORE A. LEGROS,

Proctors for Claimants

Acknowledgment of Service attached.

[Endorsed]: Filed Sept. 29, 1954.

[Title of District Court and Cause.]

ORDER SUSTAINING EXCEPTIONS TO LIBEL

Upon due hearing on this day on claimants' exceptions to the libel herein, directed to the alleged first cause of action therein, claimants appearing by G. H. Bucey of Summers, Bucey & Howard, their proctors, and libelant appearing by John D. Spellman of Kane and Spellman, his proctors;

Libelant's proctors having conceded that said alleged first cause of action should be dismissed or stricken, but without prejudice to said alleged second cause of action; and it appearing to the court proper;

It is now ordered that said exceptions with respect to said alleged first cause of action are sustained and said alleged cause of action is dismissed, but without prejudice to said alleged second cause of action;

It is further ordered that claimants may have

ten days from this date within which to answer said libel.

Done in open court this 22nd day of November, 1954.

/s/ JOHN C. BOWEN,
U.S. District Judge

Approved and presented by:

/s/ RICHARD W. BUCHANAN,
of Proctors for Claimants

Approved by:

/s/ KANE & SPELLMAN,
/s/ By JOHN D. SPELLMAN,
of Proctors for Libelant

[Endorsed]: Filed Nov. 22, 1954.

[Title of District Court and Cause.]

ORDER

There having been duly and regularly presented to this court on this day the petition of Amerocean Steamship Company, Inc., and Blackchester Lines, Inc., claimants herein, duly verified by oath and duly filed herein, seeking to have process issued in the above entitled cause against Albert W. Copp, doing business under the assumed name of "Northwest Ship Repair Co.", and to bring him into said

ause as an additional party respondent under the rovisions of Rule 56 of the Admiralty Rules promlgated by the Supreme Court of the United States; nd it appearing to the court proper that process e so issued herein against him, and that he be rought into said cause as an additional party rebondent herein, and cited to appear and answer aid petition, as well as the libel herein, and that belant also be required to answer said petition;

Now, therefore, it is ordered that, upon said petioners Amerocean Steamship Company, Inc. and lackchester Lines, Inc. filing herein a stipulation n the sum of $250.00, conditioned as required by he above mentioned Admiralty Rule 56, with surety s required by said rule, process be issued herein orthwith in accordance with the practice of this ourt, in causes of admiralty and maritime jurisiction, against said Albert W. Copp, doing busiess under the assumed name of "Northwest Ship epair Co.", citing him to appear herein and anwer said petition, as well as said libel, not later han December 21st, 1954, and also that a copy of aid petition be served upon the proctors for the belant herein, together with a copy of this order, nd that libelant make due answer to said petition ot later than 10:00 a.m. on said last mentioned ate.

Done in open court this 1st day of December, 954.

/s/ JOHN C. BOWEN,
United States District Judge

Approved and presented by:

/s/ G. H. BUCEY,
Of Proctors for Petitioners

[Endorsed]: Filed Dec. 1, 1954.

[Title of District Court and Cause.]

PETITION
(Under Admiralty Rule 56)

To the Honorable Judge of the above entitled court:

Your petitioners, Amerocean Steamship Company, Inc., a corporation, and Blackchester Lines, Inc., a corporation, the claimants in the above entitled action, for their petition herein under Admiralty Rule 56 against Albert W. Copp, doing business under the assumed name of "Northwest Ship Repair Co.", the third party respondent above named, allege and petition as follows:

I.

Said Amerocean Steamship Company, Inc., and said Blackchester Lines, Inc., are corporations organized and existing under and by virtue of the laws of the State of New York, and the owners and operators of the above named respondent steamship Amerocean, and are the claimants herein of said vessel.

II.

Said Albert W. Copp, hereinabove designated as third party respondent, is and at all times herein-

fter mentioned has been a resident of the city of Seattle, Washington, doing business therein under he assumed name of "Northwest Ship Repair Co."

III.

On September 10, 1954, there was filed in the bove entitled court by the above named libelant, Avon Smith, a libel in rem against the above named espondent steamship Amerocean, her engines, etc., n admiralty cause therein No. 16054, a copy of which libel, marked Exhibit A, is hereto attached nd by this reference made part hereof; but by rder of the above entitled court entered herein on November 22, 1954, the first alleged cause of action herein was dismissed, without prejudice, however, o the alleged Second Cause of Action therein. In aid alleged Second Cause of Action of said libel, aid libelant seeks to recover damages from said espondent vessel in the sum of $40,000.00 for perional injuries alleged to have been sustained by him n board said vessel on August 16, 1954, while said essel was lying afloat alongside a dock in the navgable waters of the port of Seattle, Washington, nd while he was engaged thereon in the course of is employment by "Northwest Ship Repair Co.", eing the third party respondent above referred to; t being alleged therein that said injuries were aused by his slipping and falling on a portion of he deck of said vessel which it is alleged was oily nd slippery, and that said vessel was unseaworthy n that respect.

IV.

The time within which to answer said libel has not expired and will not expire until after December 2, 1954; and your petitioners, as claimants of said vessel, are about to file herein their answer thereto, denying that said vessel was unseaworthy in the respects alleged, or at all, and denying that libelant's alleged injuries were caused in whole or in part by any unseaworthiness of said vessel, and denying any liability whatever to said libelant for his alleged injuries.

V.

At and prior to the time when libelant alleges he was injured on board said respondent vessel, he was engaged thereon as a rigger assisting in the work of removing certain dunnage and other material from the cargo compartments of said vessel, which work involved, among other things, the rigging of certain cargo booms of said vessel; libelant being then employed by, and under the exclusive control and supervision of, said third party respondent, who during all said period was engaged, as an independent contractor, in sole and complete charge, control and supervision of such work, having sole and complete charge, control and supervision of all portions of said vessel, and of her winches, booms and other equipment used or involved in the doing of such work, and of all persons engaged therein.

VI.

Prior to the commencement of said work by said third party respondent, your petitioners turned over

o him, and he thereupon assumed, as an independent contractor, the exclusive charge, control and supervision of all portions of said vessel, and of all her winches, booms and other equipment required or involved in the doing of such work; all of which portions of said vessel and her said equipment, including particularly all places where libelant was required to work, then were seaworthy and reasonably safe, proper and adequate for the doing of said work, if they were used, and said work done, in a reasonable and proper manner, and with the exercise of all reasonable, customary and proper precautions to avoid injury; and the nature and condition of all said portions of said vessel and her equipment, and the proper and safe manner of use thereof, and the reasonable, customary and proper precautions to be taken to avoid injury, were open and obvious to said third party respondent, and his agents and employees, and were fully known and appreciated by them, then and at all times prior to the time when libelant alleges he was injured, which precautions, if taken, would have avoided said alleged injuries.

VII.

If, after trial, it be found and determined by the court, notwithstanding the facts hereinabove alleged by your petitioners, that your petitioners, as owners and/or operators of said respondent vessel, are legally liable in damages to libelant, by reason of any failure to discharge their non-delegable duty to provide a seaworthy vessel and equipment, and

a safe place for libelant to work on said vessel; then said third party respondent is liable to petitioners for full indemnity with respect to such liability to libelant, for one or more of the following reasons, to wit:

(1) That all portions of said vessel and of her winches, booms and other equipment required or involved in the doing of the work aforesaid, were in a seaworthy and reasonably safe condition for use in such work if done in a reasonable and proper manner with the exercise of all reasonable, customary and proper precautions to avoid injury, at the time they were turned over to said third party respondent, and he then assumed exclusive charge, control and supervision thereof; and if any of said portions of said vessel, or any of her equipment thereafter became unseaworthy or unsafe, resulting in a breach of your petitioners' non-delegable duty to provide a seaworthy vessel and equipment and a safe place for libelant to work, such unseaworthiness or lack of safety was caused solely by negligence of said third party respondent, his agents and servants, in failing to properly use said portions of said vessel and her equipment, and/or in causing them to become unseaworthy or unsafe, and/or in using them and conducting said work without the exercise of reasonable customary and proper precautions to avoid injury, which precautions, if taken, would have avoided libelant's alleged injuries.

(2) That when said third party respondent un-

dertook, as an independent contractor, to perform the aforesaid work on board said vessel, and assumed control and supervision of all portions of said vessel and of her equipment required or involved in the doing of said work, and of all persons assisting in such work, he became obligated to your petitioners as owners and/or operators of said vessel to do said work in a safe and proper manner, and to refrain from doing said work, or using any part of said vessel or any of said equipment, negligently in any manner which foreseeably would render any portions of said vessel or her equipment unsafe or unseaworthy, and impose liability upon said vessel or your petitioners as owners and/or operators thereof, either because of their warranty of seaworthiness of said vessel and her equipment and of a safe place thereon for libelant to work, or otherwise.

(3) That if there was any unseaworthiness or lack of safety of said vessel or of any of her equipment, or of libelant's place of work thereon, which caused or contributed to libelant's alleged injuries (which your petitioners deny), it was due to negligence on the part of said third party respondent, his agents and servants, which was the active and primary cause of any injuries sustained by libelant; and, if there was any such unseaworthiness or lack of safety with respect to said vessel or any of her equipment, (which your petitioners deny), it was merely passive or secondary to said active negligence of said third party respondent.

VIII.

All and singular the foregoing premises are true and within the admiralty and maritime jurisdiction of the above entitled court.

Wherefore, your petitioners pray that in accordance with the provisions of Rule 56 of the Admiralty Rules, promulgated by the Supreme Court of the United States, process in due form of law, according to the course of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against said third party respondent, and that he may be cited to appear and answer, on oath, this petition, and the libel herein; that libelant also may be required to answer this petition; and that this Honorable Court may dismiss the libel of the libelant herein as against said vessel; but if any recovery herein be awarded to libelant against your petitioners, as claimants of said vessel, or otherwise, and/or against the obligors upon the obligation in lieu of bond and stipulation for costs, filed herein by your petitioners, that your petitioners be awarded recovery over by way of full indemnity against said third party respondent; and that such other or further proceedings shall be had and decree rendered herein by this court, as to law and justice shall appertain.

AMEROCEAN STEAMSHIP
COMPANY, INC.
BLACKCHESTER LINES, INC.
/s/ By G. H. BUCEY,
As One of Their Proctors
(Petitioners)

SUMMERS, BUCEY & HOWARD
/s/ G. H. BUCEY,
/s/ THEODORE A. LEGROS,
Proctors for Said Petitioners

[Exhibit attached hereto is a duplicate of Libel set out in full at pages 3-9 of this printed record.]

Duly Verified.

[Endorsed]: Filed Dec. 1, 1954.

[Title of District Court and Cause.]

PETITIONERS' STIPULATION TO PAY COSTS, DAMAGES AND EXPENSES

Know All Men By These Presents: That we, Amerocean Steamship Company, Inc., a corporation, and Blackchester Lines, Inc., a corporation, as principals, and National Surety Corporation, a corporation organized and existing under and by virtue of the laws of the state of New York, and duly authorized to transact the business of surety in the state of Washington, as surety, are held and firmly bound unto Whom It May Concern in the sum of Two Hundred Fifty Dollars ($250.00) for the payment of which sum, well and truly to be made, we do hereby bind ourselves, and our respective successors and assigns, jointly and severally firmly by these presents.

The Condition of this obligation is such that,

Whereas, a libel was filed in the above entitled

District Court of the United States for the Western District of Washington, Northern Division, by the above named libelant, Avon Smith, against the above named steamship Amerocean, her engines, etc., for the reasons and causes in said libel mentioned; and

Whereas, the above named principals have appeared in said cause and claimed the said vessel; and are about to file herein a petition seeking to bring into said cause as a third party respondent therein, Albert W. Copp, doing business under the assumed name of "Northwest Ship Repair Co.", under the provisions of Rule 56 of the Admiralty Rules promulgated by the Supreme Court of the United States;

Now, Therefore, if the above bounden principals shall pay to the libelant and/or to said Albert W. Copp, all such costs, damages and expenses as shall be awarded against them by the court, on the final decree, whether it be rendered in this or in the appellate court, then this obligation shall be void; otherwise, it shall be and remain in full force and virtue.

In Witness Whereof, we have hereunto subscribed our names and affixed our seals this 30th day of November, 1954.

AMEROCEAN STEAMSHIP COMPANY, INC.,
BLACKCHESTER LINES, INC.,
/s/ By G. H. BUCEY,
As One of Their Proctors
(Principal)

[Seal] NATIONAL SURETY CORPORATION,

/s/ By MARCELLA SEARS,
As Its Attorney-in-Fact
(Surety)

[Endorsed]: Filed December 1, 1954.

[Title of District Court and Cause.]

ANSWER OF CLAIMANTS TO LIBEL

To the Honorable Judge of the Above Entitled Court:

Amerocean Steamship Company, Inc., a corporation, and Blackchester Lines, Inc., a corporation, the claimants in the above entitled action, for answer to the libel herein, admit, deny, and allege, respectively, as follows:

I.

With respect to Article I of libelant's first alleged cause of action, which is adopted by Article I of his alleged Second Cause of Action: claimants admit that at all times therein referred to Blackchester Lines, Inc. (erroneously referred to in said article as "Blackchester Steamship Company") was and still is a corporation foreign to the State of Washington.

II.

With respect to Article II of libelant's first alleged cause of action, which is adopted by Article I of his alleged Second Cause of Action: claimants

admit that during the times therein referred to said Blackchester Lines, Inc., a corporation, together with Amerocean Steamship Company, Inc., a corporation, owned said steamship Amerocean; but otherwise claimants deny each and every allegation of said article.

III.

With respect to Article III of libelant's first alleged cause of action, which is adopted by Article I of his alleged Second Cause of Action: claimants admit that at the time therein referred to libelant was in the employ of one Albert W. Copp, doing business under the assumed name of "Northwest Ship Repair Co."; but otherwise they deny each and every allegation of said article.

IV.

With respect to Article IV of libelant's first alleged cause of action, which is adopted by Article I of his alleged Second Cause of Action: claimants admit that at the time therein referred to, a charterer of said vessel had contracted with said Albert W. Copp, doing business under the assumed name of "Northwest Ship Repair Co.", as an independent contractor, to remove certain dunnage and other material from the cargo compartments of said vessel, which work involved, among other things, the rigging of certain cargo booms of said vessel by said contractor through his agents and employees; but said claimants deny each and every other allegation contained in said article.

V.

With respect to Article V of libelant's first alleged cause of action, which is adopted by Article I of his alleged Second Cause of Action: claimants admit the allegations therein contained.

VI.

With respect to Article VI of libelant's first alleged cause of action, which is adopted by Article I of his alleged Second Cause of Action: claimants admit the allegations therein contained.

VII.

With respect to Article II of said alleged Second Cause of Action: claimants admit that on August 16, 1954, while libelant was lawfully engaged on said steamship Amerocean, in the course of his employment by said Albert W. Copp, he fell on the deck of said vessel and sustained some injury thereby, as to the exact nature of which claimants deny knowledge or information sufficient to form a belief. Claimants admit that a portion of the deck on one side of said vessel previously had been oiled with a fish oil preparation, commonly used on such vessels to prevent rust of the deck plates, and that there were no guards or ropes to prevent one from going onto that portion of said deck; but claimants deny each and every other allegation contained in said article; and particularly deny that libelant was without warning or knowledge of the condition of said portion of said deck at and prior to the time

that he fell thereon, and deny that his falling was without fault on his part.

VIII.

With respect to Article III of said alleged Second Cause of Action: claimants deny each and every allegation therein contained.

IX.

With respect to Article IV of said alleged Second Cause of Action: claimants deny knowledge or information sufficient to form a belief as to the nature or extent of libelant's alleged injuries, his alleged pain and suffering, his alleged hospitalization, his alleged loss of earnings, or expenses of maintenance or hospitalization; or as to his alleged disability, but they deny that he has been damaged in the respects or in the amount alleged, or at all, by reason of any unseaworthiness of said vessel; and otherwise deny each and every allegation in said article.

X.

With respect to Article V of said alleged Second Cause of Action: claimants admit that at the time said libel was filed said vessel was within this district and within the admiralty and maritime jurisdiction of the above entitled court.

XI.

With respect to Article VI of said alleged Second Cause of Action: claimants admit the admiralty and maritime jurisdiction of the above entitled court,

but deny that the premises alleged in said libel are true, except as hereinabove admitted or stated.

First Affirmative Defense

For a First Affirmative Defense to the alleged cause of action set forth in said alleged Second Cause of Action of said libel, said claimants allege as follows:

I.

At and prior to the time when libelant alleges he was injured on board said respondent vessel, he was engaged thereon as a rigger assisting in the work of removing certain dunnage and other material from the cargo compartments of said vessel, which work involved, among other things, the rigging of certain cargo booms of said vessel; libelant being then employed by and under the exclusive control and supervision of, one Albert W. Copp, who during all said period was engaged, as an independent contractor, in sole and complete charge, control and supervision of such work, having sole and complete charge, control and supervision of all portions of said vessel, and of her winches, booms and other equipment used or involved in the doing of such work, and of all persons engaged therein.

II.

Prior to the commencement of said work by said Albert W. Copp claimants turned over to him, and he thereupon assumed, as an independent contractor, the exclusive charge, control and supervision of all portions of said vessel, and of all her winches,

booms and other equipment required or involved in the doing of such work; all of which portions of said vessel and her said equipment, including particularly all places where libelant was required to work, then were seaworthy and reasonably safe, proper and adequate for the doing of said work, if they were used, and said work done, in a reasonable and proper manner, and with the exercise of all reasonable, customary and proper precautions to avoid injury; and the nature and condition of all said portions of said vessel and her equipment, and the proper and safe manner of use thereof, and the reasonable, customary and proper precautions to be taken, to avoid injury, were open and obvious to said Albert W. Copp, and his agents and employees, including libelant, and were fully known and appreciated by them, then and at all times prior to the time when libelant alleges he was injured, which precautions, if taken, would have avoided said alleged injuries.

III.

At and prior to the time when it is alleged that libelant fell on the deck of said vessel, he was experienced in the doing of such work upon such a vessel, and was advised and knew the condition of the portion of the deck where it is alleged he fell, and understood and appreciated the necessity of exercising all reasonable care and caution to avoid falling when going upon said portion of said deck, which care and caution, if exercised by him, would have avoided his falling and sustaining injury; but he failed to exercise such care and caution, and any

and all injuries which he then sustained were due solely to his own carelessness and negligence in that regard, and/or to negligence of said Albert W. Copp, his agents and servants, in failing to exercise reasonable, customary and proper precautions in the conduct of said work to avoid such injury. Hence, libelant is not entitled to recover herein from claimants; but, if any unseaworthiness of said vessel or her equipment was a proximate cause of libelant's alleged injuries (which claimants deny), then said negligence of libelant contributed as a proximate cause of said injuries, and any recovery herein from claimants must be reduced in the proportion that libelant's negligence contributed as a proximate cause of said injuries.

Wherefore, said claimants pray that said libel may be dismissed, or that such other order or decree be entered herein as law and justice may require, and that claimants may have and recover their costs and disbursements herein from libelant.

SUMMERS, BUCEY & HOWARD,
/s/ G. H. BUCEY,
/s/ THEODORE A. LE GROS,
Proctors for said Claimants

Duly Verified.

[Endorsed]: Filed December 1, 1954.

[Title of District Court and Cause.]

CITATION

The President of the United States of America:

To the Marshal of the United States for the Western District of Washington,

Greeting:

Whereas, a libel has been filed in the United States District Court for the Western District of Washington, Northern Division, on or about the 10th day of September, 1954, by the libelant named in the above entitled action against the respondent vessel therein named, said action being an action civil and maritime, in which said libelant seeks to recover from said respondent vessel damages in the sum of $40,000.00 for personal injuries alleged to have been sustained by him on board said vessel on August 16, 1954, while he was engaged thereon in the course of his employment by "Northwest Ship Repair Company", that being the assumed name under which the third party respondent above named, Albert W. Copp, was and is doing business, it being alleged in said libel that said alleged injuries were due to unseaworthiness of said vessel; upon which libel a monition and attachment was issued out of said court, and said respondent vessel was arrested and attached thereunder; and

Whereas, Amerocean Steamship Company, Inc., a corporation, and Blackchester Lines, Inc., a corporation, have appeared in said action and claimed the

said vessel as owners thereof, and have, on Decem-
ber 1st, 1954, filed in said court and cause a peti-
ion under the provisions of Rule 56 of the Ad-
miralty Rules promulgated by the Supreme Court
of the United States, seeking to bring into said ac-
ion as a third party respondent therein Albert W.
Copp, doing business under the assumed name of
"Northwest Ship Repair Co.", and praying that a
citation may issue against him to appear and an-
swer on oath said petition and said libel, in accord-
ance with the rules and practice of this court;

Now, Therefore, we do hereby empower and
strictly charge and command you, the said Marshal,
that you cite and admonish the said third party
respondent, Albert W. Copp, doing business under
the assumed name of "Northwest Ship Repair Co.",
if he shall be found in your district, that he be and
appear before the above entitled court, on the 21st
day of December, 1954, at 10:00 o'clock in the fore-
noon of said day, at the court room thereof, in Se-
attle, Washington, then and there to answer said
petition, and also said libel, and to make his al-
legations in that behalf; and have you then and
there this writ, with your return endorsed thereon,
or attached thereto.

Witness, the Honorable John C. Bowen, Judge
of said court, at the city of Seattle, in said Western
District of Washington this 1st day of December,
1954.

[Seal] MILLARD P. THOMAS,
Clerk

SUMMERS, BUCEY & HOWARD,
G. H. BUCEY,
Proctors for Petitioner

Marshal's Return attached.

[Endorsed]: Filed December 13, 1954.

[Title of District Court and Cause.]

ANSWER TO CLAIMANTS' PETITION

Comes now the Libelant and through his attorneys, Kane & Spellman, answers the claimants' petition, as follows:

I.

Answering paragraph I, libelant admits same.

II.

Answering paragraph II, libelant admits same.

III.

Answering paragraph III, libelant admits same.

IV.

Answering paragraph IV, libelant admits said paragraph sets forth claimants' intentions of that date.

V.

Answering paragraph V, libelant admits that he was engaged on respondent vessel as a rigger and was then employed by third party respondent; but regarding each and every allegation, matter and

thing otherwise contained therein, libelant alleges that he is without knowledge or information sufficient to form a belief as to the truth thereof and therefore denies same.

VI.

Answering paragraph VI, libelant alleges that he is without knowledge or information sufficient to form a belief as to the truth thereof and therefore denies same.

VII.

Answering paragraph VII, libelant alleges that he is without knowledge or information sufficient to form a belief as to the truth thereof and therefore denies same.

VIII.

Answering paragraph VIII, libelant denies that all and singular the premises in the petition are true, alleging that he is without knowledge or information sufficient to form a belief as to the truth thereof.

/s/ KANE & SPELLMAN,
Proctors for Libelant

Duly Verified.

Acknowledgment of Service attached.

[Endorsed]: Filed December 21, 1954.

[Title of District Court and Cause.]

ANSWER OF THIRD PARTY RESPONDENT

Comes Now Albert W. Copp, doing business under the assumed name of Northwest Ship Repair Company, third party respondent herein, and for answer to the petition to bring in third party respondent under Rule 56, admits, denies and alleges as follows:

I.

Answering Article I of said petition, third party respondent admits the same.

II.

Answering Article II of said petition, third party respondent admits the same.

III.

Answering Article III, of said petition, third party respondent admits the same.

IV.

Answering Article IV of said petition, said third party respondent admits the same.

V.

Answering Article V of said petition third party respondent admits that libelant was injured on board respondent's vessel while working as a rigger, while removing dunnage, and while being employed by third party respondent; third party respondent

denies each and every other allegation contained in Article V.

VI.

Answering Article VI of said petition third party respondent denies the same.

VII.

Answering Article VII, of said petition, third party respondent denies the same.

VIII.

Answering Article VIII of said petition, third party respondent denies the same.

Wherefore, having fully answered petition to bring in third party under Rule 56, third party respondent prays that it be dismissed herein, and that it recover its costs and disbursements herein to be taxed.

/s/ BOGLE, BOGLE & GATES,
Proctors for Third Party
Respondent

Duly Verified.

Acknowledgment of Service attached.

[Endorsed]: Filed December 21, 1954.

[Title of District Court and Cause.]

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause having duly come on for trial before the undersigned judge of the above entitled court, libelant appearing in person and claimants being represented by their proctors, Summers, Bucey & Howard (Theodore A. LeGros of counsel) and third party respondent by their proctors, Bogle, Bogle & Gates (Edward S. Franklin of counsel), and the court, having heard evidence from the respective parties and their witnesses and having heard argument of counsel, and being otherwise fully advised in the premises, does now make and enter the following:

Findings of Fact

I.

That the Amerocean Steamship Company, Inc., and Blackchester Lines, Inc., are corporations organized and existing under and by virtue of the Laws of the State of New York, and were the owners and operators of the respondent S. S. Amerocean during all times material herein, and are the claimants of said vessel.

II.

That third party respondent, Albert W. Copp, was doing business in Seattle, King County, Washington, under the assumed name and style of

Northwest Ship Repair Co." That prior to the ial of this action said Albert W. Copp died and ırsuant to stipulation in open court between procrs for claimants and third party respondent, Alert W. Copp, Jr., Executor of the Estate of Albert . Copp, deceased, was substituted as third party spondent.

III.

That on or about the 16th day of August, 1954, ırsuant to contract, said third party respondent, ıd his agents and servants, boarded the S. S. Amocean for the purpose of cleaning the holds of id vessel which had just returned to Seattle, and, id third party respondent was engaged in such ork as an independent contractor having sole and omplete charge, control and supervision of such ork, and having sole and complete charge, control ıd supervision of all portions of said vessel and l her winches, booms and other equipment used ıd involved in doing of such work, and of all perons engaged therein, including the libelant.

IV.

That libelant Avon Smith while employed by ird party respondent was injured on the S. S. merocean on August 16, 1954, while said vessel as lying at Van Vetters dock, Seattle, Washingon, and upon the navigable waters of the United tates, when he slipped on the port side of the main eck of the S. S. Amerocean abreast of No. 1 hatch. hat the port side of the deck of the S.S. Amer-

ocean had been fish-oiled at sea about August 2, 1954.

V.

That libelant Avon Smith brought suit against the S. S. Amerocean alleging that said steamship was unseaworthy in that the deck of said vessel was oily and slippery and that said steamship failed to provide him with a safe place to work.

VI.

That claimants, prior to trial, settled libelant's claim against said vessel for injuries by paying the sum of Twelve Thousand Five Hundred Dollars ($12,500.) which sum was orally stipulated in open court by proctors for third party respondent to be a reasonable settlement of libelant's claim, leaving only claimants' third party claim for full indemnity against third party respondent to be tried by the court.

VII.

That proctors for claimants admitted in open court that the main deck port side of the S. S. Amerocean was in an unseaworthy condition at time of libelant's accident because of its slippery condition, by reason of which ship owner had breached its non-delegable duty to provide libelant with a safe place to work.

VIII.

That said S. S. Amerocean was negligent in failing to provide a seaworthy vessel and to provide a safe place to work, which negligence was passive.

IX.

That third party respondent, through its agents nd employees, namely foremen Walter W. Houl-on and Claude W. Romo, had knowledge of the ondition of the main deck port side of the S. S. Amerocean sometime prior to the injury to libelant, nd with such knowledge had ordered libelant to vork on that portion of the main deck of said vessel vithout warning him of the known condition of aid deck or exercising due care to remedy said nown condition of said deck all of which negligence vas active negligence and the sole proximate cause f libelant's injury.

X.

That neither third party respondent nor its agents r employees obtained any assurance prior to libel-nt's injury from any of the officers of the S. S. Amerocean that sawdust or other substance would e sprinkled on the port side of said deck to cor-ect its slippery condition.

XI.

That the intervenors lien for compensation and nedical expense paid libelant by intervenors has een satisfied.

Done in open court this ..... day of October, 1955.

.....,
U.S. District Judge

From the foregoing findings of fact, the court loes now make and enter its

Conclusions of Law

I.

That all of the above are within the Admiralty and Maritime jurisdiction of this court.

II.

That the negligence of claimants was passive and the negligence of third party respondent was the active proximate cause of libelant's injury, and claimants are entitled to full indemnity against the third party respondent in the sum of Twelve Thousand Five Hundred Dollars ($12,500.) together with costs.

III.

That the libel herein is dismissed with prejudice and without costs to any party.

IV.

That intervenor's petition be dismissed without costs.

Done in open court this ..... day of October, 1955.

.....,

U.S. District Judge

Acknowledgment of Service attached.

[Endorsed]: Filed October 6, 1955.

[Title of District Court and Cause.]

PROPOSED DECREE

The above entitled case having duly come on for rial before the undersigned judge of the above en-itled court on Sept. 28, 1955, libelant appearing n person and claimants being represented by their proctors, Summers, Bucey & Howard (Theodore A. LeGros of counsel) and third party respondent by heir proctors, Bogle, Bogle & Gates (Edward S. Franklin of counsel), and the court, having heard evidence from the respective parties and their wit-nesses and having heard argument of counsel, and being otherwise fully advised in the premises, and having heretofore made and entered its Findings of Fact and Conclusions of Law.

Now Therefore, in accordance therewith

It is herewith Ordered, Adjudged and Decreed that the libel be dismissed with prejudice and with-out costs to any party, and

It is further Ordered, Adjudged and Decreed that claimants be and they are hereby awarded full in-demnity against substituted third party respondent in the sum of Twelve Thousand Five Hundred Dol-lars ($12,500.) together with their costs, and

It is further Ordered, Adjudged and Decreed that intervenor's petition be dismissed without costs.

Done in open court this ..... day of October, 1955.

.....,
U.S. District Judge

Presented and Approved by:

/s/ SUMMERS, BUCEY & HOWARD,
/s/ THEODORE A. LeGROS,
Proctors for Claimants

Acknowledgment of Service attached.

[Endorsed]: Filed October 6, 1955.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter having come on for trial before the above entitled court, on September 28, 1955; and the libelant being represented by his proctors, Messrs. Kane and Spellman, and claimants being represented by their proctors, Messrs. Summers, Bucey & Howard and Theodore A. LeGros, Esquire; and Third Party Respondent and Substituted Third Party Respondent, and Intervenor being represented by their proctors, Messrs. Bogle, Bogle & Gates, and Edward S. Franklin, Esquire, and the court having listened to the statements and stipulation of counsel, and to all the evidence in the cause, offered by any of the parties herein, and being fully

advised in the premises, now enters herein the following:

Findings of Fact

I.

That claimants, Amerocean Steamship Company, Inc., and Blackchester Lines, Inc., a corporation, were the owners and operators of the Liberty vessel "Amerocean" at all times material to the libel.

II.

That on or about August 16, 1954, claimants entered into a contract with Albert W. Copp, doing business under the assumed name of "Northwest Ship Repair Company," Third Party Respondent, to clean the holds of the steamship "Amerocean" which had just returned to Seattle from a voyage to Japan.

III.

That libelant, Avon Smith, while employed by Third Party Respondent, was injured on the steamship "Amerocean" on Aug. 16, 1954, while said vessel was lying at Van Vetter's Dock, Seattle, Washington, and upon the navigable waters of the United States when he slipped on the port side of the deck of the steamship "Amerocean" abreast of No. 1 hatch because of the slippery condition of the deck. That the port side of the deck of the steamship "Amerocean" had been fish oiled at sea about August 2, 1954, but had failed to dry at the time of libelant's injury and was very slippery, of which fact libelant was unaware.

IV.

That claimants, prior to the trial of this case, settled libelant's claim against them for injuries in the amount of $12,500. which sum was orally stipulated in open court by proctors for Third Party Respondent to be a reasonable settlement of libelant's claim for damages, leaving only claimant's Third Party claim for indemnity to be tried by the court.

V.

That prior to the trial of the action, Third Party Respondent, Albert W. Copp died and by stipulation in open court between proctors for the claimants and Third Party Respondent it was agreed that Albert W. Copp, Jr., Executor of the Estate of Albert W. Copp, should be substituted as Third Party Respondent in lieu of Albert W. Copp, deceased.

VI.

That proctors for claimants admitted in open court that the deck of the port side of the steamship "Amerocean" was in an unseaworthy condition at the time of libelant's accident because of its slippery condition and that as shipowner it had breached the vessel's non-delegable duty to provide libelant with a safe place to work and the court finds by reason of said breach the libelant was injured.

VII.

That Third Party Respondent was also actively negligent in permitting libelant to proceed to the

ort side of the deck of the steamship "Amerocean" vithout warning him of its slippery condition of vhich it had knowledge; that its foreman, Walter Holthan, did not obtain any assurances prior to ibelant's injury from any of the officers of the Amerocean" that sawdust or other substance would e sprinkled on the port side of the deck to correct ts slippery condition.

VIII.

That the Intervenor's lien for compensation has een satisfied herein by libelant refunding to Inervenor the payment of compensation and medical xpenses paid libelant by Intervenor under the Longshoremen and Harbor Worker's Compensation Act.

Done in Open Court this 6th day of October, 1955.

/s/ JOHN C. BOWEN,
Judge

From the foregoing Findings of Fact the court now enters its:

Conclusions of Law

I.

That the joint acts of negligence on the part of both claimants and Third Party Respondent were active, continuous and concurrent to the time of the libelant's injury and proximately caused libelant's injury and claimants and Third Party Respondent were and are joint tort feasors under the doctrine of Halcyon Lines vs. Haaen Corporation, 342 U.S. 282, and the Ninth Circuit case of Union

Sulphur & Oil Co. vs. Jones, 195 F.(2d), 93 and no right of contribution exists in favor of claimants and Third Party Respondent.

II.

That the libel herein is dismissed with prejudice and without costs to either party.

III.

That claimants' petition impleading Third Party Respondent under Admiralty Rule 56 be dismissed with prejudice and with costs in favor of Third Party Respondent.

IV.

That Intervenor's petition be dismissed without costs.

Done in Open Court this 6th day of October, 1955.

/s/ JOHN C. BOWEN,
Judge

Approved and Notice of
Presentation Waived:
/s/ KANE & SPELLMAN,
/s/ By JOHN D. SPELLMAN,
Proctors for Libelant

Presented by:
/s/ EDW. S. FRANKLIN,
Proctors for Third Party Respondent, Substituted Third Party Respondent and Intervenor.

Acknowledgment of Service attached.
[Endorsed]: Filed October 6, 1955.

In the United States District Court for the Western District of Washington, Northern Division

In Admiralty—No. 16054

AVON SMITH, Libelant,

vs.

THE STEAMSHIP AMEROCEAN, her engines, etc., Respondent,

AMEROCEAN STEAMSHIP COMPANY, INC., a corporation, and BLACKCHESTER LINES, INC., a corporation, Claimants,

ALBERT W. COPP, doing business under the assumed name of "Northwest Ship Repair Co.", Third Party Respondent.

ALBERT W. COPP, JR., as Executor under the Last Will and Testament of Albert W. Copp, deceased, Substituted Third Party Respondent,

FIREMAN'S FUND INSURANCE COMPANY, a corporation, Intervenor.

DECREE

This matter coming on for trial before the above entitled court, on September 28, 1955; and the libelant being represented by his proctors, Messrs. Kane and Spellman, and claimants being represented by their proctors, Messrs. Summers, Bucey & Howard and Theodore A. Le Gros, Esquire; and Third Party Respondent and Substituted Third Party Respondent, and Intervenor being represented by their proctors, Messrs. Bogle, Bogle & Gates and Edward S. Franklin, Esquire, and the court herein having entered its Findings of Fact and Conclusions of Law, now, therefore,

It is hereby Ordered, Adjudged and Decreed that the libel herein be dismissed with prejudice and without cost to either party.

It is further Ordered, Adjudged and Decreed that claimants petition to implead Third Party Respondent under Admiralty Rule 56 be dismissed with prejudice and with costs in favor of Third Party Respondent, to which claimants except, and its exception is hereby allowed.

It is further Ordered, Adjudged and Decreed that Intervenor's petition be dismissed without costs.

It is further Ordered, Adjudged and Decreed that the cost bond heretofore filed herein by libelant and the written undertaking in lieu of bond filed by the claimants herein be exonerated from further liability.

Done in Open Court this 6th day of October, 1955.

/s/ JOHN C. BOWEN,
Judge

Approved and Notice of Presentation Waived:

/s/ KANE & SPELLMAN,
/s/ JOHN D. SPELLMAN,
Proctors for Libelant.

Acknowledgment of Service attached.

[Endorsed]: Filed October 6, 1955.

[Title of District Court and Cause.]

EXCEPTIONS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW AS PROPOSED BY SUBSTITUTED THIRD PARTY RESPONDENT AND AS SIGNED BY THE COURT

Claimants herein except to the following Findings of Fact and Conclusions of Law as proposed by substituted third party respondent and as signed by the court, as follows:

Exceptions to Findings of Fact

1. Claimants except to finding number VI, and particularly that portion thereof following the phrase "place to work" in line 16 on page 3, upon the ground that such finding is not supported by, and is contrary to, the greater weight and preponderance of the credible evidence in said cause, in that it finds, in effect, that the alleged breach by claimants of their duty was an active, proximate cause of libelant's injury, instead of finding that it was merely passive and was not an active, proximate cause of such injury.

2. Claimants except to finding number VII upon the grounds that such finding is not supported by, and is contrary to, the greater weight and preponderance of the credible evidence in said cause, and particularly the use of the word "also" before the phrase "actively negligent" in the first line thereof, in that it implies active negligence also on the part

of claimants; and the failure to add after the word "knowledge" in line 22 thereof on page 3 a finding that said third party respondent negligently failed to use reasonable, customary and proper precautions, including the use of sawdust or other substance on said deck to remedy its slippery condition to avoid injury to libelant in using said deck.

Exceptions to Conclusions of Law

3. Claimants except to conclusion of law number I as proposed by substituted third party respondent and as signed by the court, upon the grounds that it is not supported by, and is contrary to, the greater weight and preponderance of the credible evidence in said cause, and that it is not warranted in law; particularly in that it concludes that claimants were guilty of active, continuous and concurrent acts of negligence, which were a proximate cause of libelant's injuries, and that claimants were joint tort feasors with said third party respondent.

4. Claimants except to conclusion of law number III as proposed by substituted third party respondent and as signed by the court, upon the grounds that it is not supported by, and is contrary to, the greater weight and preponderance of credible evidence in said cause, and that it is not warranted in law, in that it concludes that the impleading petition of claimants should be dismissed with prejudice and with costs in favor of third party respondent, instead of concluding that said petition should be sustained and claimants awarded recovery

over against substituted third party respondent as prayed for in said petition.

SUMMERS, BUCEY & HOWARD,
/s/ THEODORE A. LE GROS,
Proctors for Claimants

The foregoing exceptions have been called to the attention of the court and are noted and allowed this 6th day of October, 1955.

/s/ JOHN C. BOWEN,
United States District Judge

Acknowledgment of Service attached.

[Endorsed]: Filed October 6, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Clerk of the above entitled court:

To Albert W. Copp, Jr., as Executor under the Last Will and Testament of Albert W. Copp, deceased, Substituted Third Party Respondent and to Bogle, Bogle & Gates, Proctors for Substituted Third Party Respondent.

Notice is hereby given that Amerocean Steamship Company, Inc., a corporation, and Blackchester Lines, Inc., a corporation, claimants above named do hereby appeal to the United States Court of Appeals for the 9th Circuit from that certain final decree in the above entitled action entered upon the

6th day of October, 1955, by the United States District Court for the Western District of Washington, Northern Division, wherein claimants' petition to implead substituted third party respondent under Admiralty Rule 56 was dismissed with prejudice and with costs in favor of substituted third party respondent.

Dated this 28th day of December, 1955.

AMEROCEAN STEAMSHIP COMPANY, INC., a corporation, and BLACKCHESTER LINES, INC., a corporation,

/s/ SUMMERS, BUCEY & HOWARD,
/s/ By THEODORE A. LE GROS,
Proctors for Claimants

[Endorsed]: Filed December 28, 1955.

[Title of District Court and Cause.]

STIPULATION RE BOND ON APPEAL

Claimants and substituted third party respondent by their undersigned proctors do stipulate that claimants as petitioners have filed herein an undertaking entitled "Petitioners' Stipulation to pay Costs, Damages and Expenses" by the terms of which claimants and/or National Surety Corporation are bound to pay to substituted third party respondent all costs awarded against them on the final decree whether rendered in this or in the ap-

ellate court. That said undertaking remains in full force and effect, and it is stipulated that said undertaking may be considered to be a bond on appeal for the purpose of satisfying the requirement for such bond upon the filing of notice of appeal in this cause.

/s/ BOGLE, BOGLE & GATES,
Proctors for Substituted Third
Party Respondent

SUMMERS, BUCEY & HOWARD,
/s/ THEODORE A. LE GROS,
Proctors for Claimants

ORDER

Upon the foregoing stipulation it is hereby ordered that "Petitioners' Stipulation to pay Costs, Damages and Expenses" be continued in full force and effect as a bond on appeal in satisfaction of the requirement for filing said bond with the filing of notice of appeal in the above entitled cause.

Done in open court this 28th day of December, 1955.

/s/ JOHN C. BOWEN,
United States District Judge

Prepared, Presented and Approved by:

/s/ SUMMERS, BUCEY & HOWARD,
/s/ THEODORE A. LE GROS,
Of Proctors for Claimants

Approved by:

/s/ BOGLE, BOGLE & GATES,

Of Proctors for Substituted Third Party Respondent

[Endorsed]: Filed December 28, 1955.

[Title of District Court and Cause.]

DESIGNATION OF RECORD

To the Clerk of the Above Entitled Court:

You are hereby requested to include the following listed documents in the record on appeal of the above entitled cause:

1. Libel.
2. Claim of Ownership.
3. Obligation in Lieu of Bond.
4. Claimants' Exceptions to Libel.
5. Order Sustaining Exceptions to Libel.
6. Answer of Claimants to Libel.
7. Petition Under Admiralty Rule 56.
8. Order Allowing Petition.
9. Petitioners' Stipulation to pay Costs, Damages and Expenses.
10. Citation.
11. Answer by Libelant to Claimants' Petition.
12. Answer of Third Party Respondent.
13. Claimants' Proposed Findings of Fact and Conclusions of Law.
14. Claimants' Proposed Decree.

15. Exceptions to Findings and Conclusions as igned by the Court.
16. Findings of Fact and Conclusions of Law.
17. Decree.
18. Notice of Appeal.
19. Stipulation re Bond on Appeal.
20. Reporter's Transcript of the Evidence.

Dated this 12th day of January, 1956.

SUMMERS, BUCEY & HOWARD,
/s/ By THEODORE A. LE GROS,
Of Proctors for Claimants

Acknowledgment of Service attached.

[Endorsed]: Filed January 13, 1956.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that pursuant to the provisions of Rule 75(o) of the Federal Rules of Civil Procedure, and Subdivision 1 of Rule 10 of the United States Court of Appeals for the Ninth Circuit, and designation of counsel, I am transmitting herewith as the Apostles on Appeal in said cause, the following original documents in the file dealing with the action, to-wit:

1. Libel, filed Sept. 10, 1954.

4. Claim of Ownership, filed Sept. 10, 1954.

5. Obligation in Lieu of Bond, filed Sept. 10, 1954.

7. Claimants' Exceptions to Libel, filed Sept. 29, 1954.

10. Order Sustaining Exceptions to Libel, filed Nov. 22, 1954.

13. Petition under Admiralty Rule 56, filed Dec. 1, 1954.

11. Order Allowing Petition under Adm. Rule 56, filed 12-1-54.

15. Answer of Claimants to Libel, filed Dec. 1, 1954.

14. Petitioners' Stipulation to Pay Costs, Damages and Expenses, filed Dec. 1, 1954.

16. Citation on Libel, with Marshal's Return, filed Dec. 13, 1954.

17. Answer to Claimants' Petition, filed Dec. 21, 1954.

19. Answer of Third Party Respondent, filed Dec. 21, 1954.

40. Claimants' Proposed Findings of Fact and Conclusions of Law, filed Oct. 6, 1955.

41. Claimants' Proposed Decree, filed Oct. 6, 1955.

42. Findings of Fact and Conclusions of Law, filed Oct. 6, 1955.

43. Decree, filed Oct. 6, 1955.

44. Exceptions to Findings of Fact and Conclusions of Law as Proposed by Substituted Third

Party Respondent and as Signed by the Court, filed Oct. 6, 1955.

47. Notice of Appeal, filed Dec. 28, 1955.

48. Stipulation re Bond on Appeal, filed Dec. 28, 1955.

49. Designation of Documents to be Included in Record on Appeal, filed Jan. 13, 1956.

46. Court Reporter's Transcript of Proceedings at Hearing, filed Dec. 23, 1955.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office on behalf of appellants for preparation of the record on appeal in this cause, to-wit: Filing fee, Notice of Appeal, $5.00; and that said amount has been paid to me by proctors for the appellants.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle this 31st day of January, 1956.

[Seal] MILLARD P. THOMAS,
Clerk

/s/ By TRUMAN EGGER,
Chief Deputy

In the District Court of the United States, Western District of Washington, Northern Division

No. 16054

AVON SMITH, Libelant,

vs.

THE STEAMSHIP AMEROCEAN, Respondent,

vs.

AMEROCEAN STEAMSHIP CO., INC., et al., Claimants,

vs.

ALBERT W. COPP, dba Northwest Ship Repair Co., Third Party Respondent,

FIREMAN'S FUND INSURANCE CO., Intervenor.

TRANSCRIPT OF PROCEEDINGS

Before: The Honorable John C. Bowen, District Judge.

This matter having come on for trial before the above entitled court, on Wednesday, September 28, 1955 at 10:00 a.m.; and the libelant being represented by his proctors, Messrs. Kane and Spellman, and claimants [1*] being represented by their proctors, Messrs. Summers, Bucey & Howard and Theo-

* Page numbers appearing at foot of page of original Reporter's Transcript of Record.

dore A. LeGros, Esquire; and Third Party Respondent and Substituted Third Party Respondent, and Intervenor being represented by their proctors, Messrs. Bogle, Bogle and Gates, and Edward S. Franklin, Esquire, the following proceedings were had and occurred:

The Court: In the case of Avon Smith, Libelant, versus The Steamship "Amerocean", her engines, etc., Respondent, American Steamship Company, Inc., a corporation, and Blackchester Lines, Inc., a corporation, Claimants, Albert W. Copp, doing business under the assumed name of "Northwest Ship Repair Co.", Third Party Respondent, are parties and their counsel ready to proceed with that trial?

Mr. LeGros: Claimant is ready, Your Honor.

Mr. Franklin: Third party respondent is ready, Your Honor.

The Court: All right, you may proceed now with your opening statement of what you think the proof will be in this action.

(Mr. LeGros opened the case to the Court on behalf of the claimant.)

(Mr. Franklin opened the case to the Court on [2] behalf of the third party respondent.)

The Court: The claimant may proceed with claimant's case in chief.

Mr. LeGros: I will call as my first witness, Avon Smith.

The Court: Come forward and be sworn as a witness.

AVON SMITH

caled as a witness by and on behalf of claimant, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. LeGros): Would you state your name in full?

A. Avon Varney Smith.

Q. Your residence is where, Mr. Smith?

A. At the Roslyn Hotel, Seattle.

Q. What is your marital status?

A. What?

Q. Are you single? A. Yes. [3]

Q. What is your occupation, Mr. Smith?

A. Boilermaker rigger.

Q. Were you so engaged on August 16, 1954?

A. Was I working?

Q. Were you engaged as a boilermaker?

A. Yes.

Q. By whom were you employed on that date?

A. Northwest Ship Repair Company.

Q. On that date, did you have occasion to board the steamship Amerocean?

A. Did I board it, yes.

Q. What time of day was it you boarded the SS Amerocean?

A. Well, it was shortly after one o'clock, about one-fifteen.

Q. To whom did you report aboard that vessel?

A. To my rigger foreman, Walter Houlton.

The Court: Did you give a date, Mr. Smith?

Testimony of Avon Smith.)

The Witness: August the 16th, 1954.

The Court: You may proceed.

Q. (By Mr. LeGros): And did Mr. Houlton nstruct you as to your duties? [4] A. Yes.

Q. Did anyone else instruct you on that occaion? A. No.

Q. You took all your orders from Mr. Houlton?

A. I did.

Q. And what duties were you given on that ccasion?

A. To lift the boom on the starboard side.

Q. And did you proceed to do that?

A. We did.

Q. Were you directed to do any work on the ortside?

A. We were to go on the portside and bring he boom out on the portside.

Q. Were you directed to the portside of the essel by Mr. Houlton? A. Yes.

Q. Did Mr. Houlton tell you in any way as to ny condition of the main deck of the vessel which vas unsafe? A. No.

Q. You were given no warning by him, then, f any oil on the deck? A. No.

Q. Just how did the injury to you occur? [5]

The Court: I haven't heard of any yet.

Q. (By Mr. LeGros): You received an injury n that occasion? A. Yes.

Q. How did the injury occur?

A. By slipping on the deck.

Q. Where did you step from onto the deck?

(Testimony of Avon Smith.)

Where had you been immediately prior to stepping onto the deck?

A. I'd been on top of the hatch.

Q. Tell the Court just what you did to cause the injury.

A. I went to the edge of the hatch. I sat down on the top there, put my right foot down on a bar that runs forward and aft of the hatch there, then I stepped off with my left foot, and that's when I slipped.

Q. And as a result of slipping, what were the injuries you received, if any?

A. Fractured hip.

Q. While you were standing on the hatch, Mr. Smith, did you receive any warning from Mr. Houlton as to the condition of the deck?

A. No.

Q. Was anything hollered to you by Mr. Houlton or Mr. Romos, or anyone else, in the nature of a [6] warning upon your stepping on the deck?

A. No.

Q. As a result of these injuries, Mr. Smith, you were hospitalized? A. Yes.

Q. And where were you taken?

A. To the Virginia Mason Hospital.

Q. How long were you in the hospital?

A. Oh, I couldn't rightly say, but I think it was pretty close to two months.

The Court: Which hip was broken?

The Witness: The left.

Q. (By Mr. LeGros): Following your release

(Testimony of Avon Smith.)

from the hospital, Mr. Smith, were you able to return to work? A. No.

Q. Have you been able to return to work as yet?

A. On easy jobs, yes.

Q. Have you been able to work full time?

A. No.

Q. Mr. Smith, you have an arthritic condition that existed prior to this injury?

A. Yes, I did.

Q. And what was the relation of the broken hip to the arthritis, if you know? [7]

A. Well, I had no pain in my leg before that I have now.

Q. Have you noticed any progressive fusion of your joints? A. No.

Mr. LeGros: You may examine.

Cross Examination

Q. (By Mr. Franklin): Mr. Smith, when did you go to work on the SS Amerocean on August the 16th, 1954, in the morning or afternoon?

A. Afternoon.

Q. And what time did you board the vessel?

A. About ten minutes after one.

Q. It wouldn't have been around 12:30 or earlier, would it?

A. No, it was after that.

Q. And how long were you working on the starboard side of the vessel?

A. About ten minutes.

(Testimony of Avon Smith.)

Q. I see, and had you at any time been over on the portside of the vessel before this accident?

A. No, I wasn't. [8]

Q. And when you went over to the portside, where were you standing?

A. I was on the hatch.

Q. Number one hatch?

A. Number one hatch.

Q. Forward or middle of the hatch?

A. A little aft.

Q. A little aft, and where were Mr. Houlton and Mr. Romo?

A. Mr. Romo was attaching the line into the hook he was shackling it in.

Q. Where was he standing?

A. He was on top of the hatch too.

Q. He was on top of——

A. ——of number one hatch.

Q. I see, near the winches?

A. It was close to the winches.

Q. I mean, standing on the deck, on the winches?

A. On the hatch.

Q. Where was Mr. Houlton?

A. He went in what we call in by the house, aft of Number one, and was releasing the midship.

Mr. Franklin: I think that's all. Thank you, Mr. Smith.

Mr. LeGros: That's all, Mr. Smith. [9]

The Court: You may step down, Mr. Smith.

(Witness excused.)

The Court: Call your next witness.

Mr. LeGros: I will call Mr. Houlton.

The Court: Come forward, Mr. Houlton.

WALTER HOULTON

called as a witness by and on behalf of claimant, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. LeGros): Woud you give us your full name, please, Mr. Houston?

A. Walter Houlton.

Q. And your address?

A. 9311-31st, S.W.

Q. And your marital status, please?

A. Married.

Q. You are employed where, Mr. Houlton?

A. At the present time at Commercial Ship Repair in Winslow, Washington. [10]

Q. You are here in response to a subpoena?

A. Yes.

Q. Mr. Houlton, on August 16, 1954, where were you employed?

A. Northwest Ship Repair Company.

Q. That is the organization operating as Albert W. Copp, doing business under the assumed name of Northwest Ship Repair Company?

A. Yes, sir.

Q. And in what capacity were you employed by them? A. As rigger foreman.

(Testimony of Walter Houlton.)

Q. And how long had you been acting as rigger foreman for that company?

A. Well, I would judge it was five years, at least.

Q. When did you terminate your employment with that company?

A. At the death of Mr. Copp.

Q. At the death of Mr. Copp?

A. That was in March of this year.

Q. What were your duties as a rigger foreman?

A. Well, they varied. You were working in the engine room one day, and taking care of the machinery, and some days you'd be taking care of the ship's gear [11] and removing debris from the holds, and so forth.

Q. Specifically, referring to the SS Amerocean, what were you duties on board that vessel as rigger foreman?

A. On that occasion it was removal of wheat partitions that evidently existed in the ship during the voyage.

Q. And you were being directed by whom?

A. Well, the superintendent was Mr. Trout.

Q. He was the one you looked to for instructions? A. Yes.

Q. You took instructions only from him?

A. Or from Mr. Copp, if he happened to be around.

Q. And you, in turn, were responsible for men under your supervision? A. Yes.

(Testimony of Walter Houlton.)

Q. How many men did you have under your supervision that day?

A. Well, I would say eight, all told.

Q. And you gave them their work orders?

A. Yes.

Q. And so they carried out their work?

A. Yes.

Q. Was Avon Smith one of the employees of [12] that gang? A. Yes.

Q. And when did Mr. Smith report aboard the SS Amerocean?

A. Well, I know he was called for—started after lunch, but it takes a while for the crew to drive out from the yard to the Van Vetter's Dock, and as to the exact time, I can't remember.

Q. What time did you yourself arrive aboard the SS Amerocean?

A. It was around nine o'clock, I believe, in the morning.

Q. That would be nine in the morning of August 16th? A. Yes.

Q. Did you have occasion Mr. Houlton, to at any time be on the portside main deck of the SS Amerocean prior to noon?

A. Yes, between 11:30 and 11:45 a scow arrived for this debris that we were removing off the ship, and I assisted in tying it up.

Q. On that occasion, did you have any opportunity to observe the condition of the portside main deck? A. Yes.

(Testimony of Walter Houlton.)

Q. And what did you observe as to its condition? [13]

A. It was very slippery.

Q. Did you yourself slip? A. Yes.

Q. Were you injured?

A. Well, I wasn't injured, but I caught myself on the wrist—injured my wrist a little bit.

Q. Now, when you returned to work after lunch, would you say, was about 12:30? A. Yes.

Q. And shortly thereafter, Mr. Smith reported to your gang, is that correct?

A. Yes, that's correct.

Q. And what work did you direct him to do?

A. Well, we were raising the starboard boom in order to remove the dunnage from the hold, and slacking the guy line as we were going up with the boom, and that was our first line of duty.

Q. What function was Mr. Smith playing in this operation?

A. Well, he was assisting us and using the winch fall for topping the boom. They have that chain type boom, and we used one winch fall from one side to the other to raise the booms.

Q. Now, when Mr. Smith reported to you for this job, did you know it would be necessary for the portside [14] main deck to be used?

A. What do you mean by "used"?

Q. In your topping the booms, did you know you would have to use——

A. Sure, you'd have to use both sides.

(Testimony of Walter Houlton.)

Q. Did you say anything to Mr. Smith as to the condition of the deck?

Mr. Franklin: What side?

Q. The portside?

A. Not prior to the time he started to go—to step on it; I said something to him, whether he heard me, I don't know, as to its slipperyness.

Q. Prior to the immediate occasion of the injury, you had said nothing to him?

A. No, I hadn't.

Q. You were aware, however, that that side of the deck was slippery?

A. Well, sure, being aware of it by the fact that I was tying up the scow there. It was at that time that I went up to the first mate's room and talked to someone that was in there—whether he was the first mate or not, I don't know—as to the existing condition, and that it should be taken care of.

The Court: I think it would be better if you would relate what you said to him and what he said [15] to you, and whether anyone else was present, and the specific place the two of you were at, at the time the conversation was made.

Mr. LeGros: I will try, in asking a question——

The Court: At this time the Court will take a ten-minute recess.

(A ten-minute recess was declared.)

Mr. LeGros: May the reporter read the last question and answer?

The Court: That will be done.

(Testimony of Walter Houlton.)

(Reporter read last question and answer, page 15, lines 16-23.)

Q. (By Mr. LeGros): You don't know who you talked to, Mr. Houlton?

A. No, I went to the mate's room though. It was one of the ship's officers, I imagine.

Q. But you don't know?

A. Not exactly, no, I don't.

The Court: Are you sure of that, Mr. Houlton?

The Witness: Yes, sir.

The Court: And you say you don't recall which room you went to?

The Witness: I was to his room, but as to what man, what his job was—I assumed he was one [16] of the officers, and he said it would be taken care of.

The Court: You may proceed.

Q. (By Mr. LeGros): Mr. Houlton, what was the condition of the ship as to its crew, at that time, if you know?

A. They were in a state of confusion, due to the fact they were paying off, and there was quite a lot of evidence of partying around.

Q. The shipping commissioner was aboard, was he not? A. Yes.

Q. And they were paying off, at that time?

A. Yes.

Q. And that was prior to noon?

A. No, I don't know whether he was aboard yet or not, but I think he was, because I heard him remarking that they were paying off.

Q. That was prior to noon? A. Yes.

(Testimony of Walter Houlton.)

Q. You say on that occasion that you requested awdust? A. Yes, sir.

Q. You knew that sawdust could be spread on leck to make it safe? [17]

A. To make it so you could walk, at least.

Q. You knew that could be done?

A. Yes.

Q. Where you then in the vicinity of the port nd starboard main deck around No. 1 hatch for he rest of the time up to the injury?

A. No, I was down the hold, prior to that, and hen they told me the scow was arriving, which I ied up.

Q. And that was about 11:30?

A. 11:30 to 12, somewheres in there.

Q. Then you went to the main deck in the locaion of the injury—where it occurred?

A. Not before dinner, I didn't.

Q. And you said you slipped on the main deck ourself?

A. Yes, in tying up the scow I slipped, yes.

Q. Then after lunch you were working around he main deck then right up at No. 1?

A. That's right.

Q. And on that occasion did you have an opporunity to walk around that portion of the ship?

A. No, because we were taking care of pumping ut this fore peak that was full of water, and the pump had stopped. We were using air instead of steam, or [18] anything from the pier, and we went on the pier to start the pump going again.

(Testimony of Walter Houlton.)

Q. Were you aboard the vessel when Mr. Smith arrived? A. Yes.

Q. And you were aboard the vessel when you directed him in his activities? A. Yes.

Q. How far from him were you at the time he was injured?

A. Well, I was, I would say—I would estimate thirty feet from him.

Q. You were about thirty feet from him?

A. Yes.

Q. And Mr. Romo was located where?

A. Well, I would say he was close to the hatch combing on the after end.

Q. Close to the hatch combing on the after end?

A. Yes.

Q. And approximately how many feet from Mr. Smith, if you know?

A. Within twenty feet—less than that, probably, about fifteen feet.

Q. When did this barge tie up off of Number 1?

A. Well, that was prior to dinner. [19]

Q. Prior to dinner? A. Yes.

Q. And what was the condition of the deck portside in the vicinity of No. 1 hatch prior to lunch, if you know?

A. Well, like I told you, it was slippery.

Q. Had you been in that vicinity, immediately prior?

A. That's where we tied the scow up.

Q. And you say you slipped in the vicinity of No. 1 hold? A. Yes.

(Testimony of Walter Houlton.)

Q. That was in the same general area as Mr. Smith's injury took place? A. Yes.

Mr. LeGros: You may examine.

Cross Examination

Q. (By Mr. Franklin): Mr. Houlton, when was the first time that you were in the vicinity of the portside of No. 1 hatch on the day of Mr. Smith's accident?

A. Just prior to lunch, between 11:30 and 12, I don't know the given time. That's when the scow arrived. [20]

Q. No work had been performed by your employees on the portside prior to noon?

A. No, we'd been in the hold, taking care of things there.

Q. And what did you find the condition of the portside deck to be in at that time when you fell?

A. There was slippery oil that had been placed on the deck.

Q. And did you feel that that condition should be remedied?

Mr. LeGros: I object to that, if the Court please.

The Court: That state of mind question, the last one, the objection to that is sustained.

Q. (By Mr. Franklin): What did you feel should be done, if anything?

Mr. LeGros: I will object to that—same objection.

The Court: That objection is sustained. You can

(Testimony of Walter Houlton.)

ask him what he did, or what he said to anyone representing the ship.

Mr. Franklin: He's a foreman, Your Honor, and should be entitled to testify.

The Court: It is not material to what he felt, if he didn't communicate it to somebody. [21]

Q. (By Mr. Franklin): What is the usual corrective mechanism applied to a slippery oily deck?

A. When we have our vessel over at Pier 29 or 30, where we did some of our work from the port pier, we had sand and also salt and sawdust stored on the pier that we used for oily conditions, like if we were pumping bilges, and some spilled on the deck, and we soon took care of it.

Q. How far away was this sand and sawdust from the Amerocean?

A. Well, that's miles away, but——

Q. Where was it stored?

A. It was stored both at Pier 29 there, at that time, and also in our own shop.

Q. Where was your shop located at?

A. It's on 1st Avenue South, I believe.

Q. Then you stated that you went to the First Mate's quarters? A. Yes, sir.

Q. How soon after you fell?

A. Well, right after I tied up the scow I went up there.

Q. Did you talk to the officer occupying the First Mate's quarters? [22]

Mr. LeGros: I object to that, if the Court please.

The Court: Why?

(Testimony of Walter Houlton.)

Mr. LeGros: The form of the question, "Did you talk to the officer occupying the First Mate's quarters?"

Mr. Franklin: I will rephrase it.

Q. (By Mr. Franklin): Did you talk to the officer in the First Mate's quarters?

A. I talked to a given person that was in there.

Q. And what did you say to him?

A. I said the deck was very slippery, and if it was possible, we would like sawdust to plant around on the deck, so we could navigate and walk around on it.

Q. What did this officer say in reply?

A. He said, "We'll get some."

Q. Did he tell you they had a supply on the vessel? A. I couldn't say as to that.

Q. After you had this conversation with the man, then where did you go? A. Out to eat.

Q. And you came back to the vessel about what time? [23]

A. Well, it was either shortly after 12:30, or around that time.

Q. And at that time, was Mr. Smith aboard the vessel, or did he come aboard subsequently?

A. No, he came in after that.

Q. Now, you were asked by counsel why you didn't tell Mr. Smith that you had determined that the portside of the deck was slippery and unsafe. Why didn't you tell him when he came aboard?

A. I naturally assumed——

Mr. LeGros: I object to that; it's an assumption.

(Testimony of Walter Houlton.)

Mr. Franklin: I don't think so. He has been asked whether he notified Mr. Smith, and I am entitled to ask why he did not notify him.

Mr. LeGros: The form of the question asks for the state of mind on the part of the witness.

The Court: The objection is sustained.

Mr. Franklin: Your Honor he is holding that I am not entitled——

The Court: It's the state of mind.

Mr. Franklin: I am not asking for the state of mind, but he has a reason why he [24] didn't do it.

The Court: The reason will have to be drawn by the Court, and the Court is trying to hear the testimony as to what he did with respect to notifying the ship's representatives, and what was said by him to the ship's representatives, and what was said by the ship's representatives to him.

Q. (By Mr. Franklin): Mr. Houlton, at any time before Mr. Smith's accident, were you notified by the ship's officers that the sawdust had not been placed on the portside of the foredeck of the SS Amerocean? A. No.

Q. Were you present at any time on the portside of the vessel prior to Mr. Smith's accident, after you came back from lunch? A. No.

Q. Where were you standing at the time of Mr. Smith's accident?

A. Right directly to the stern of the winch where the midship guy was made fast—it was on the mast table.

(Testimony of Walter Houlton.)

Q. And after Mr. Smith's accident, what did you do about procuring any sawdust? [25]

Mr. LeGros: I object to that, if the Court please. It's calling for events happening after the accident occurred.

The Court: Well, if it's something that happened—relating to what change in conditions——

Mr. LeGros: Yes, Your Honor.

Mr. Franklin: I think I have a right to show if the condition is changed here, in furnishing a safe place to work. I am showing that immediately after we ascertained that the man had not strewn the sawdust, that we sent for sawdust on our own hook.

The Court: If that is——

Mr. LeGros: My objection would go to that, if the Court please.

The Court: Does it relate to improving the premises afterwards, and involve the question of whether or not events may be improved by changing the premises after the accident?

Mr. Franklin: No, Your Honor, the events merely go to show that after the accident that Mr. Houlton then requested leave to go into town and get sawdust [26] and bring it back. That bears on the reasonableness of the conditions of the Northwest Ship Repair Company.

The Court: The objection is overruled. I do not wish to receive, inadvertently or otherwise, any evidence of the actual change in the condition, in order

(Testimony of Walter Houlton.)

to overcome the alleged conditions, unless you show immediate authority for it.

Mr. Franklin: I understand, Your Honor, and I don't think this is objectionable from that standpoint, because it merely shows what we did.

Q. (By Mr. Franklin): Would you tell the Court what orders you gave with reference to any corrective measures?

Mr. LeGros: I object to that, if the Court please —"corrective measures."

The Court: Objection sustained.

Q. (By Mr. Franklin): Would you tell the Court what you did, if anything, to procure any supplies for the deck?

A. Well, right after the accident——

Mr. LeGros: Objection——

The Court: Right after the accident? [27]

Mr. Franklin: Yes, Your Honor.

The Court: The objection is sustained.

Q. (By Mr. Franklin): Now, Mr. Smith——

The Court: I will be very glad to consider, if you care to give me authorities for it. It may be you've got some authorities——

Mr. Franklin: I don't have any at this time.

The Court: ——by which you are entitled, expressly, to show that the condition of the alleged slipperyness was purposely and knowingly changed immediately subsequently after the accident, and improved. I will be glad to go into it further if you will show me some authorities.

Q. (By Mr. Franklin): Mr. Houlton, you stated

(Testimony of Walter Houlton.)

on direct examination that the ship was in confusion at the time of Mr. Smith's accident, and there was partying around. Will you state what you meant by "partying around"?

A. Well, you could notice it——

The Court: No, he wants you to explain that phrase.

The Witness: "Partying around"? [28]

Q. (By Mr. Franklin): Yes, what you found as to partying around.

A. Oh, they had a few bottles of beer, and so forth, and——

Mr. Franklin: That's all. Thank you.

Redirect Examination

Q. (By Mr. LeGros): The members of the crew, Mr. Houlton, were being paid off?

A. Yes, sir.

Q. They were signing off?

A. I imagine they were; they said they were.

Q. Paying off articles, in effect—they were off the payroll, as you said, is that correct?

A. I imagine—I don't know whether they were off the payroll or not.

Q. That's the customary purpose in signing off, is it not?

A. But that doesn't mean they are off the payroll. I have signed off and on many a time.

Mr. LeGros: That's all. Thank you.

The Court: Step down, Mr. Houlton.

(Witness excused.) [29]

Mr. LeGros: I will call Mr. Romo.

CLAUDE RAYMOND ROMO

called as a witness by and on behalf of claimant, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. LeGros): Will you state your name in full? A. Claude Raymond Romo.

Q. Your address, Mr. Romo?

A. 10129—South 66th Street.

Q. Your marital status? A. Married.

Q. You are here in response to a subpoena?

A. Yes, sir.

Q. On August 16, 1954, Mr. Romo, by whom were you employed?

A. Northwest Ship Repair Company.

Q. That is the company that is named in the pleadings as Albert W. Copp, doing business as Northwest Ship Repair Company? [30]

A. Yes.

Q. About how long had you been employed by them?

A. Oh, approximately fourteen months.

Q. Was that fourteen months prior to this accident? A. Yes.

Q. And how long did you remain in their employ after the accident?

A. Two or three months, I don't recall exactly.

Q. What was the nature of this employment?

(Testimony of Claude Raymond Romo.)

A. I was a boilermaker foreman.

Q. How long had you been a foreman for this company?

A. All the time I was with the company.

Q. And your duty as boilermaker foreman was what, Mr. Romo?

A. Well, repairing boilers and fittings—steel—change of burners and welders.

The Court: Does that boilermaker term or classification of occupation include rigging, so-called?

The Witness: Yes, Your Honor, they have riggers come under the Boilermakers' Local, and they are therefore included in that.

The Court: Proceed. [31]

Q. (By Mr. LeGros): Mr. Houlton was also a foreman? A. Yes.

Q. And your duties complemented each other, I take it? A. Yes.

Q. And who was in charge of the work aboard the SS Amerocean that day?

A. Barney Trout, the supervisor.

Q. On that day, Mr. Romo, prior to the accident of Mr. Smith, did you have occasion to become familiar with the condition of the main deck portside in the vicinity of Number 1 hatch?

A. Only at the time that I helped tie up the scow that came alongside.

Q. And when was that, please?

A. At approximately 11:30, in that neighborhood.

Q. That is 11:30 on the 16th of August of 1954?

(Testimony of Claude Raymond Romo.)

A. Yes.

Q. And was that in the general vicinity of the area where Mr. Smith fell later that day?

A. Yes, alongside of Number 1 hatch; the scow was tied up there.

Q. What was the condition of the main deck there, as you found it? [32]

A. On the portside?

Q. Yes.

A. It was covered with oil or grease, and it was slippery.

Q. Did you make any comment of that condition to anyone, at that time?

A. I don't recall offhand, but when Mr. Houlton slipped when we were tying up the scow, we might have made some remark, or I may have told him about the condition then.

Q. Did you feel that the condition of the deck at the time was safe for use by the personnel of the company? A. No.

The Court: I think you should ask him if he knows what the condition of the deck was; what he feels it was is not a proper question.

Mr. LeGros: I think I previously asked him.

The Court: You asked him if he felt it was safe. The Court strikes the question as not proper form.

Q. (By Mr. LeGros): What was the condition of the deck as you found it on that occasion? [33]

The Court: If you observed the condition.

A. Yes, I would say the deck was slippery.

Q. Was the deck——

(Testimony of Claude Raymond Romo.)

The Court: State if you know, so and so, or something like that.

Q. (By Mr. LeGros): If you know, Mr. Romo, was the condition of the deck, at that time, safe for use?

Mr. Franklin: Objection——

The Court: The objection is sustained. It would be competent to state, if he knows, what the condition was with respect to the work, and its adaptability to the work.

Q. (By Mr. LeGros): Mr. Romo, can you tell us what the condition of the deck was at that time, with relation to the nature—with respect to the type of work necessary to perform your type of work aboard ship?

A. I would say it was too slippery to work on.

The Court: Do you wish the Court to know from this witness what were the elements contributing, if he knows, to the conditions?

Mr. LeGros: Yes, Your Honor.

Q. (By Mr. LeGros): And what was the nature of the substance on the [34] deck which caused the slipperyness?

The Court: If you know, or if you observed it.

A. It was what they call fish oil on the deck.

Q. Do you, from your own knowledge, know what that is?

A. No, not offhand, no, I don't.

The Court: State, if you know, why it is applied to the deck?

(Testimony of Claude Raymond Romo.)

The Witness: It acts as a rust preservative, I believe.

Q. (By Mr. LeGros): And all around that time, prior to noon, had you or Mr. Houlton ordered sawdust from your company?

A. I believe that Mr. Houlton had. I don't know whether I had ordered it—we'd mentioned something about we should have sawdust for the deck.

Q. And did he say where he was going to get the sawdust?

A. No, but I naturally know that he had ordered it from our office.

Q. Do you know if sawdust was ordered prior to noon? A. No, I couldn't say.

Q. You had discussed that with Mr. Houlton, however? [35] A. Yes.

Q. Where were you standing at the time Mr. Smith reported for work in the vicinity of this Number one hatch?

A. When he reported for work, I believe I was on the starboard side of Number 1 hatch.

Q. And do you know the nature of the work that he was undertaking? A. Yes.

Q. Did you know that it would be necessary for him to use the portside? A. Yes.

Q. Did you in any way give him any warning as to the condition of the portside? A. No.

Q. Do you, to your knowledge, know whether Mr. Houlton gave him any warning?

A. No, I couldn't say.

Q. How far were you standing from Mr. Smith

Testimony of Claude Raymond Romo.)

t the time he stepped off the hatch cover on the ortside of the main deck?

A. About 15 to 20 feet, in that neighborhood. was standing aft of the hatch.

Q. Did you hear any warning being shouted at ie time he stepped off? A. No, I didn't.

Q. You heard no warning?

A. No, I didn't.

Mr. LeGros: You may examine.

Mr. Franklin: No questions.

The Court: Step down, Mr. Romo.

(Witness excused.)

The Court: Call the next witness.

Mr. LeGros: I would like, at this time, if the ourt please, to introduce the testimony of Edward . O'Neill, taken by deposition on May 13, 1955, ursuant to written stipulation of the parties.

The Court: It is in under the same cover as that f Leo Morrissey, is it not?

Mr. LeGros: No, not under the same cover. I vill ask that that deposition be published.

The Court: Let the record show the Court does ow publish all depositions previously received by he clerk, in this case. I have before me a deposi- ion entitled: "Deposition of Edward J. O'Neill * * " You may proceed. I wish you would kip——

Mr. LeGros: I think we can go down to page 2 f the direct examination.

The Court: You may proceed. [37]

"EDWARD J. O'NEILL

having been first duly sworn on oath, was called as a witness in behalf of the respondents, and testified as follows:

Direct Examination

Q. (By Mr. LeGros): Would you state your name, please? A. Edward J. O'Neill.

Q. And what is your home address, Mr. O'Neill?

A. 770 Ocean Avenue in Brooklyn, New York.

Q. What is your occupation?

A. I sail on the ship as Chief Mate.

Q. How long have you been Chief Mate on the Amerocean? A. Since about June, 1954.

Q. And were you Chief Mate on the voyage from the Far East to Seattle in August of 1954?

A. I was.

Q. Mr. O'Neill, what are the duties of Chief Mate on board a vessel such as the Amerocean?

A. Well, it might be a large story. I am chief of the three mates. I take care of the ship's work in addition to standing watch and navigation watch.

Q. Is it part of your duties to see to the maintenance of the ship's equipment such as gear and tackle? A. That's right. [38]

Q. How about the general over-all housekeeping of the ship, decks and that?

A. The decks outside and all of the cargo gear and certain parts of the inside of the ship I take care of.

Q. Then you have charge of the maintenance of the decks? A. That's right.

Q. Do you recall whether or not any portion of

Deposition of Edward J. O'Neill.)

he decks of the Amerocean were oiled with fish oil n the voyage from the Far East to Seattle in August? A. Yes, I do.

Q. And what portion of the deck was oiled?

A. The port side, forward.

Q. And that is what side of the ship?

A. It's the lefthand side looking forward.

Q. And what portion of the deck was oiled at hat time?

A. Well, from the extreme bow to the—I'd say he after end of Number 3 hatch.

Q. And what sort of preparation did you cause o be put on the deck?

A. Oh, a combination of fish oil, lamp black, nd Japan dryer.

Q. Could you tell us about what proportions you sed in this mixture? [39]

A. About 20 gallon of fish oil, 4 or 5 gallon of ryer, and maybe ten packages of dry lamp black.

Q. And that was applied to the deck how, Mr. O'Neill?

A. We may use swabs. I get my voyages mixed p. This particular voyage I think we used—I'm ot sure whether we used swabs or rollers. We use ifferent ones.

Q. And who applies this mixture to the deck?

A. The men on deck, my sailors.

Q. Do you recall when that portion of the deck vas oiled?

A. I believe it was on the 3rd of what, July, August—when did the accident happen?

(Deposition of Edward J. O'Neill.)

Q. The accident was August 16th.

A. Well, it was about four days after leaving Pusan.

Q. Now, the accident report says August 3, is that about the date?

A. That's about the day. I'm not sure of the day.

Q. Now, with this mixture that you used, how many days would you estimate that it would take for this mixture to dry?

A. Under good weather conditions it would dry in maybe three or four days, but under these conditions, I know what I was up against with rain and fog up ahead of me, and I use extra dryer, and it would [40] take maybe 8 or 9, ten days.

Q. Do you recall whether or not that portion of the deck was in use following the application of this mixture? A. Immediately after?

Q. Immediately after. A. No.

Q. When was it put in use?

A. It was before our arrival in port, about two days or maybe one day before, I topped booms.

Q. What do you mean when you top booms?

A. I raise my booms, spread the guys, got lines on deck prepared for port.

Q. And you did that with the ship's personnel?

A. With the ship's personnel.

Q. And did the ship's personnel use this portion of the deck that had been oiled? A. They did.

Q. Was there any trouble caused by use of that portion of the deck? A. No, sir.

(Deposition of Edward J. O'Neill.)

Q. Did you personally examine that portion of the deck prior to the use of it by the men?

A. I did.

Q. In your opinion was that deck safe for their use? [41] A. I think so.

Q. Now, Mr. O'Neill, what type — kind of weather did you have on the trip from Pusan?

A. We had foggy, rainy weather as far as I remember.

Q. Why was it that you had oiled only that portion of the deck that was oiled?

A. Because the port side was slow in drying and the weather we had from then on didn't permit me to put oil on a wet deck, and I stopped early because I wait 'til one side gets dry before I do the other. I keep one side always open.

Q. Now, when your men were using the forward port side to top the booms, was there any necessity for the application of sawdust to that deck?

A. No, sir.

Q. On the 16th, if you can recall, Mr. O'Neill, what type of weather did you have in Seattle? If you wish to refer to the logs, why they are before you.

A. I don't think I need it. It rained during the night and it rained in the morning. I'm quite sure, and I think it stopped at around 12 or 1 o'clock, stopped raining, somewhere around there.

Q. Now, a deck that has been recently fish oiled, will that have a different appearance from a deck that has not been oiled? [42]

(Deposition of Edward J. O'Neill.)

A. I think so.

Q. What is the difference in the two surfaces by appearance?

A. Well, I might say this, as oftentimes—if I may say this.

Q. Go ahead.

A. Oftentimes being on the bridge looking to see what work you're going to do on the day, generally in the morning I am on watch from 4 o'clock every morning 'til 8 o'clock, and generally in the morning, I look for whether the day is going to be good or bad to see how I can do work on the deck, because you can't do the same type work if it's rainy or wet and there is a distinct difference between a deck that is oiled with water on it from the look of it, and a deck that is not oiled.

Q. What is the difference in appearance?

A. Well, I would say that the water as it hits, it runs down the deck a little differently, the rain water.

Q. Is there any difference in the color of the deck?

Mr. Kane: I object to that question on the ground that it's leading.

Q. (By Mr. LeGros): You may answer. Go ahead. [43]

A. Is there a difference in the color of the deck?

Q. Yes. A. In this particular case, yes.

Q. And what is the—why is that?

A. Because the part that is oiled is black and the part that is not oiled is rusty, it's red, sort of.

(Deposition of Edward J. O'Neill.)

Q. Now, when is it that you first heard of this accident to Avon Smith? A. When?

Q. Yes.

A. I might say immediately after the accident.

Q. And where were you at that time?

A. I was in the saloon.

Q. And who were you with at that time?

A. I was with—well, I was with the captain.

Q. And what were you engaged in at that time?

A. In assisting him paying off, may have been transportation, it may have been—it was a payoff, but I'm not sure, but I was there watching the money, you know.

Q. And who reported the accident to you, if you recall? A. The stevedore boss.

Q. Do you recall his name?

A. No, I don't.

Q. Did you make the log entry on the 16th? [44]

A. I did.

Q. Could you refer to that entry? Who was the party that made the report?

A. Walter Houlton.

Q. And what was his capacity?

A. He was a rigger foreman.

Q. Had you previously had any conversation with this party prior to this?

A. I probably had at some time during the day.

Q. Had anyone representing the company that was aboard with the riggers made any request to you for any sawdust to put on the deck?

(Deposition of Edward J. O'Neill.)

Mr. Kane: I object to that on the ground that it is leading.

The Witness: Shall I answer?

Q. (By Mr. LeGros): Answer it.

A. No.

Q. Had anyone representing anyone other than ship's personnel made any request for such material?

Mr. Kane: I object to that on the ground that it is leading.

Witness: Would you mind repeating that question?

Q. (By Mr. LeGros): My question was, had anyone other than ship's [45] personnel made any request of you for sawdust or any other material to spread on the deck?

A. No, not until this time.

Q. When did the riggers first come aboard?

A. May I refer to this again?

Q. Yes. A. 8:30.

Q. It's 8:30 in the morning? A. Yes.

Q. Do you recall whether or not the riggers would have had any occasion to use the portion of the deck that we will refer to as the oiled portion prior to the time of this accident?

A. I would think so.

Mr. Lister: We move to strike that as not being responsive to the question and obviously a conclusion of the witness.

Q. (By Mr. LeGros): What had they been engaged in doing aboard the ship?

Deposition of Edward J. O'Neill.)

A. Again may I refer to this? I have forgotten now. Well, reading from the log——

Mr. Lister: May I ask this, Mr. O'Neill, you don't have any independent recollection at all of what the riggers [46] had been doing prior to the time this man got hurt?

Witness: Oh, well, I have. I know the reason they were aboard and I know what transpired that morning, but the thing is, if I can't say—and can I say——

Mr. Lister: Well, if you know.

Witness: Who was on this ship?

Mr. Lister: You can say what you know.

Witness: Yes.

Mr. Lister: I thought you said you didn't know and you had to look at the log to——

Witness: Well——

Mr. Lister: You were reading from the log.

Witness: Well, I won't read from the log. I didn't read it yet, but the thing is this, I had to look to see if it was the time when they came aboard, but I want to say this, that it hasn't been brought out here to my knowledge, that at this time there was a captain and one mate on the ship that was working, one mate, that was me, and a [47] chief engineer and a first assistant and I think two firemen were down to keep the steam up, but actually working on the payroll for this day, there was the captain and myself and a chief engineer and the first assistant engineer, and that was all, so we were tying the ship up, and as you know we

(Deposition of Edward J. O'Neill.)

have many duties at that time for a couple men.

Q. (By Mr. LeGros): Do you know, Mr. O'Neill, what the Northwest Ship Repair men were doing aboard the ship? A. Yes.

Q. What were they doing?

A. Dismantling grain fittings and removing the property of the former charterer, States Steamship Company, and returning the ship to the owner in the same condition it was to be found in.

Q. What portion of the ship's main deck would be used by them for that purpose?

A. Well, they were working in number 4 hatch, and therefore used that part of the ship, the after end of the ship, and the passageway up to number 1.

Q. Would that include the portion of the deck we have [48] referred to as the oiled portion?

A. I would say so.

Q. When was the first time a request was made of you for sawdust? A. After the accident.

Q. And by whom was that request made?

A. By this foreman, Walter Houlton.

(In Accordance With a Stipulation of Counsel, Lines 5-12 on Page 12 Were Deleted.)

Q. Did Mr.—what did Mr. Houlton say to you in reporting the accident?

A. He told me that a man had just broken his leg and that he had been removed from the vessel and I said—I figured this took a long time, and I said when did he break it, and when did he get off, and he said, "I helped him." When they sent him

(Deposition of Edward J. O'Neill.)

to the hospital, that was the first notice that I had that he had injured himself.

Q. Do you recall making an examination of that port side with the captain later in the day?

A. I do.

(In Accordance With a Stipulation of Counsel, Lines 23-30, Page 10, Were Deleted, and Lines 1-17 on Page 11.)

Q. In your opinion had the fish oil on that portion of it dried prior to August the 16th? [49]

Mr. Kane: I object to that question on the ground that it calls for an opinion.

Witness: Do I answer?

Mr. LeGros. Yes.

Mr. Lister: Further, that the gentleman has shown no qualification to answer a question calling for a conclusion.

A. No, to speak truthfully, I can't say that the entire deck was entirely free of dampness because of oil.

Q. That was a condition, Mr. O'Neill, that would be——

Mr. Kane: I object to that question on the ground that it is a statement of counsel rather than a question.

Mr. LeGros: I haven't asked the question yet.

(In Accordance With a Stipulation of Counsel, Lines 4-14, Page 12, Were Deleted.)

(In Accordance With a Further Stipulation, Lines 15-30, Page 12, Were Deleted, Also Pages 13-32.)

(Deposition of Edward J. O'Neill.)

Cross Examination

Q. (By Mr. Kane): At no time did you discuss with these rigger shore gang the condition of the port side of the vessel that had previously been oiled? [50] A. No, sir.

Q. You never warned them or told them?

A. It was never brought up by anybody.

Q. You never put any signs up?

A. No signs.

Q. Or roped that area off? A. No rope.

Q. Isn't it customary when you go into dry dock or when you oil a vessel, do you leave a pathway that hasn't been oiled or do you rope the oiled portion off or put up some warning signs?

A. I'd say no, unless we had some particular fresh paint job, we want to keep people off, put up rope, even aboard ship, with a crew aboard, we don't put up signs to tell them it's fresh paint or something like that.

Q. But you leave an area dry?

A. At certain times we do. It depends on whether they must have entrance and exit from certain places.

Q. Don't you put up signs that a deck is oiled or slippery, "keep off," "Paint" or "wet"?

A. No, we don't.

Q. You never do that? A. No, sir.

Q. You never rope off an area that's been painted or oiled? [51]

A. When it's fresh in certain places I would, and I have.

(Deposition of Edward J. O'Neill.)

Q. But at this time you didn't discuss anything with that shore gang that it was wet?

A. No discussion with them about the oil on deck or anything of that sort, and they just came on the deck via the starboard side and then worked around the winches and the booms.

Q. And they would step over to the port side, is that correct?

A. I've got to say something to you about the starboard side and the port side. Now, to open a hatch up you must——

Q. Why don't you just answer your questions.

A. Yes.

Q. They would come on the starboard side to get aboard ship and then they had access to the entire deck. A. Yes.

Q. Ordinarily when a man was working on the starboard side he wouldn't see the oiled section of the port side. A. Oh, yes, he would.

Q. Unless it was called to his attention, he wouldn't notice that it had been previously oiled.

A. Well, the ship isn't that broad. It's only 85 foot in width. [52]

Q. Now, at this time——

A. And you certainly can see the deck on the other side.

Q. I mean if he were engaged in trimming this boom or something like that, there is a possibility he might not see it, or notice it.

A. There is a possibility that he might not see it.

(Deposition of Edward J. O'Neill.)

Q. Or rather see the condition of the deck.

A. To me he'd have to see it."

Mr. Franklin: That's all if the Court pleases.

The Court: This deposition, as to the parts read, is now received in evidence as a part of the case in chief of the respondents and cross libelants, Blackchester Lines, Inc., and the Amerocean Steamship Company, Inc., against the third party respondent, Albert W. Copp, doing business under the assumed name of Northwest Ship Repair Company. Is there anything else to be said?

Mr. LeGros: I wonder—it has come to my attention that there is necessity for a substitution of parties as to the identity of the third party respondent.

The Court: Mr. Copp?

Mr. LeGros: Yes, the probate is pending in the Superior Court of King County. Albert W. Copp, Jr., is the executor of the estate. I would like, at this time, to substitute him as executor.

The Court: You need some proof of his death, something to show——

Mr. LeGros: Mr. Franklin has stipulated with me on that.

Mr. Franklin: If the Court pleases, Your Honor may require certified copies, but I have stipulated that because of the death of Albert W. Copp, that his son may be appointed in his stead as the third party respondent.

The Court: And you believe his name to be Albert W. Copp, Jr.?

Mr. Franklin: Yes.

The Court: That stipulation is approved, and so ordered that such substitution be made. You may proceed. Is there anything else to be said or done?

Mr. Franklin: Yes, I take it, Your Honor, it is now the third party respondent, now presenting his case, and third party respondent moves the evidence will be a document, which [54] we desire to have marked.

The Court: The third party respondent will now proceed.

(Respondent's Exhibit No. A-1 marked for identification.)

The Court: As I understand it, these two claimants and respondents and cross libelants have rested their case?

Mr. LeGros: Yes.

Mr. Franklin: If the Court please, respondent and third party respondent offers in evidence respondent's Exhibit A-1, being a certified copy of the weather report of August the 16th, 1954, showing that there was precipitation or rain at 7:00 that morning, and no rain thereafter until 8:00 p.m. that evening. We offer it in evidence.

The Court: Is there any objection?

Mr. LeGros: No objection.

The Court: Admitted.

(Document previously marked Respondent's Exhibit A-1 for identification, now received in evidence.)

Mr. Franklin: Third party respondent rests.

The Court: Do the respondents and cross libelants rest? [55]

Mr. LeGros: We rest, Your Honor.

The Court: Are counsel ready to argue the matter? Is this all the evidence that is to come before the Court in this case?

Mr. LeGros: Yes, Your Honor.

Mr. Franklin: Yes, Your Honor.

The Court: You may proceed.

(Mr. LeGros argued the case to the Court on behalf of claimants.)

(Mr. Franklin argued the case to the Court on behalf of third party respondent.)

Oral Decision

This Matter having come on for hearing before the Honorable John C. Bowen, Judge of the above-entitled Court, on Wednesday, September 28, 1955, at 10:00 a.m., libelant appearing in person and not represented by counsel, claimant being represented by Summers, Bucey & Howard, and Theodore A. LeGros, impleaded third party respondent being represented by Bogle, Bogle & Gates, and Edward S. Franklin, all parties having been heard and all parties having rested, the Court being fully advised in the premises, thereupon rendered the following:

Oral Decision

The Court: From a preponderance of the evidence the Court finds, concludes and decides that the third party respondent did not, notwithstanding the unclear statements of one of the witnesses, ob-

ain from any representative of the ship or ship wner any promise that the fish oil slippery deck vould be remedied, that the negligence of the ship nd those connected with its work in creating and eaving the fish oil slippery deck condition in ques- ion, and the acts of the third party respondent in vorking and continuing to work in the presence of hat slippery condition were concurrent and active cts of negligence. There was no passive negligence nvolved on the part of either the ship and/or its mployees, or any of them, nor on the part of the hird party respondent and/or its employees, or any f them.

The acts of negligence were concurrent. They vere continuing at the time the libelant, employee f the third party respondent, slipped on the fish il slippery deck and sustained his injury.

In this case it is not contended, as was the situa- ion in U.S.A. vs. Arrow Stevedoring Company, 949 A.M.C. 1444, that there was any specific con- ract of indemnity in favor of the ship owner or he ship as to any injuries which might be after he execution of such contract sustained by [57] the mployees of an independent contractor like a steve- loring contractor, doing work aboard ship.

The slipperiness caused by the oil spread upon he deck by employees of the ship was just as active t the time of the accident as it was when the oil vas first applied. At the moment of the occurrence f the accident the negligence of the third party espondent was in all respects active. It necessarily ollows that the negligence of the ship in creating

and permitting to continue the fish oil slippery deck was concurrent with such negligence of the third party respondent, who by continuing the work with the knowledge of the slippery condition of the deck, continued the active effect of the third party respondent's negligence.

The rule of the Halcyon Lines case, 96 L. Ed. 318, and the rule of the case of Union Sulphur and Oil Corp. vs. Jones & Son, 195 F. (2) 93 relating to joint tort feasors, apply here and deprive cross libelant ship owner of the right to recover indemnity against the third party respondent in this case.

(Hearing Concluded at 4:15 p.m., September 28, 1955.) [58]

[Endorsed]: Filed December 23, 1955.

[Endorsed]: No. 15023. United States Court of Appeals for the Ninth Circuit. Amerocean Steamship Company, Inc., a corporation, and Blackchester Lines, Inc., a corporation, Appellants, vs. Albert W. Copp, Jr., as Executor under the Last Will and Testament of Albert W. Copp, deceased, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed: February 3, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

In Admiralty—No. 15023

MEROCEAN STEAMSHIP COMPANY, INC., a corporation, and BLACKCHESTER LINES, INC., a corporation, Appellants,

vs.

LBERT W. COPP, JR., As Executor under the Last Will and Testament of Albert W. Copp, deceased, Respondent.

APPELLANTS' STATEMENT OF POINTS

o the Honorable Judges of the above entitled court:

Come now the appellants and pursuant to Rule 7 (6) of the above entitled court do file with the erk the following statement of points upon which ppellants intend to rely:

1. The trial court erred in finding and concluding that negligence of the SS Amerocean and claimants in failing to provide a safe place of work was ctive, continuous and concurrent with the negligence of respondent, and in finding and concluding hat claimants were joint tort-feasors with respondent.

2. The trial court erred in not finding that any egligence of the SS Amerocean and claimants was assive.

3. The trial court erred in not finding that the

active negligence of respondent was the sole proximate cause of libelant's injury.

4. The trial court erred in not finding that respondent failed to discharge its obligation to refrain from doing his work on said vessel, or using any part of said vessel, negligently in any manner which foreseeably would impose liability upon said vessel or claimants.

5. The trial court erred in not entering decree as proposed by claimants allowing full indemnity against respondent.

6. The trial court erred in entering decree dismissing claimants' petition.

Respectfully submitted,

/s/ SUMMERS, BUCEY & HOWARD,
/s/ THEODORE A. LE GROS,
Proctors for Claimants and
Appellants herein

Acknowledgment of Service attached.

[Endorsed]: Filed Feb. 7, 1956. Paul P. O'Brien, Clerk.